

JUDICIAL ETHICS COMMITTEE  
AND THE  
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
  
NOTICE OF PROPOSED RULES CHANGES

The Judicial Ethics Committee and the Rules Committee jointly have submitted to the Court of Appeals the Report of the Judicial Ethics Committee and One Hundred Fifty-Third Report of the Rules Committee, transmitting thereby the proposed rescission of current Rules 16-813 and 16-814 and the adoption in their place of new Rules 16-812.1 (Judicial Ethics Committee), 16-813 (Maryland Code of Judicial Conduct), and 16-814 (Maryland Code of Conduct for Judicial Appointees) of the Maryland Rules of Procedure; proposed amendments to Rules 4-327, 5-605, 16-815, 16-816, and 17-105 of the Maryland Rules of Procedure; and proposed amendments to Rules 3.5 and 8.2 of the Maryland [Lawyers'] Rules of Professional Conduct.

The Committees' Report and the proposed rules changes are set forth below.

Interested persons are asked to consider the Committees' Report and proposed rules changes and to forward on or before August 23, 2004 any written comments they may wish to make to:

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June 30, 2004

REPORT OF THE JUDICIAL ETHICS COMMITTEE AND  
ONE HUNDRED FIFTY-THIRD REPORT  
OF THE  
STANDING COMMITTEE ON RULES  
OF PRACTICE AND PROCEDURE

The Honorable Robert M. Bell,  
Chief Judge

The Honorable Irma S. Raker  
The Honorable Alan M. Wilner  
The Honorable Dale R. Cathell  
The Honorable Glenn T. Harrell, Jr.  
The Honorable Lynne A. Battaglia  
The Honorable Clayton Greene, Jr.,  
Judges

The Court of Appeals of Maryland  
Robert C. Murphy Courts of  
Appeal Building  
Annapolis, Maryland 21401

Your Honors:

The Judicial Ethics Committee and the Rules Committee jointly submit this Report of the Judicial Ethics Committee and One Hundred Fifty-Third Report of the Rules Committee. The Committees recommend that the Court adopt the proposed rules changes transmitted with this Report. Transmitted herewith are proposed new Rule 16-812.1, into which provisions concerning the Judicial Ethics Committee have been transferred from Canon 7 of the current Maryland Code of Judicial Conduct and revised; proposed revised Rules 16-813 and 16-814; and conforming and related amendments to Rule 16-816 and Rules 3.5 and 8.2 of the Maryland [Lawyers'] Rules of Professional Conduct. Conforming amendments to Rule 16-815 and to cross references that follow Rules 4-327, 5-605, and 17-105 also are proposed.

In revising Rule 16-813 (Maryland Code of Judicial Conduct), the Committees reviewed the current Maryland Code originally adopted in 1987 and amended from time to time ("Maryland Code (1987)"), the Model Code of Judicial Conduct adopted by the American Bar Association in 2000 ("ABA Code (2000)"), with amendments in August 2003 ("ABA Code (2000, amended 2003)"), and pertinent Maryland Judicial Ethics Opinions. For the most part, the Committees achieved consensus as to the recommended provisions of the Code. Where consensus could not be reached, the separate recommendations of the two Committees are presented in the form of alternatives for the Court's consideration.

A summary of the significant aspects of the proposals is set forth below.

#### Rule 16-812.1. Judicial Ethics Committee

Organizationally, the Committees recommend that the provisions relating to the Judicial Ethics Committee appear in a rule separate from the Code of Judicial Conduct. This recommendation is made because the provisions are not properly a "Canon" as delineated in the Preamble to the proposed revised Code and because the duties of the Judicial Ethics Committee extend beyond the Code of Judicial Conduct.

The Committees propose the modification and addition of numerous provisions relating to the organization and operation of the Judicial Ethics Committee, based on a model for legislative drafting of statutes for boards, commissions, etc. Thus, for example, provisions as to a vice chair, meeting and quorum provisions, and a provision for staff are proposed.

The quorum provision is based on the membership "then serving," rather than the authorized membership, in accordance with current practice.

The term of members of the Judicial Ethics Committee is proposed to be extended from 1 to 3 years. The Committees believe that staggered 3-year terms provide some continuity in decisions of the Judicial Ethics Committee and, for ease of implementation, recommend that the number of members be set at 9, rather than the current range of 7 to 9 members. The Committees are aware of the time demands of membership and the direct impact of the Judicial Ethics Committee's actions on judges. Accordingly, the Committees have concluded that the Court may wish to consider some form of term limit. A term limitation is added, in accordance with the ABA Code (2000) provisions. A slightly different form of limit is stated for the Commission on Judicial Disabilities in Maryland Constitution, Article IV, §4A (d).<sup>1</sup>

The Committees have not included in the list of duties of the Judicial Ethics Committee the duty to review an agreement between a judge-designate and his or her law firm for payments relating to the liquidated value of the judge-designate's interest in the practice. The requirement that the agreement be submitted to the Judicial Ethics Committee currently is set forth in Canon 4I (b) (2)-(4) of Maryland Code (1987) and is not carried forward in the proposed revised Code. The agreements seldom are submitted sufficiently in advance of qualification to allow meaningful review, and the nature of review is ministerial, pertaining only to compliance with a presumptive 5-year period for payout. Thus, the Judicial Ethics Committee is in a position of approving an agreement containing such a period notwithstanding other provisions egregiously in violation of other provisions of the Code of Judicial Conduct. The provisions of Code, Courts Article, §1-203, which allow agreements, and mandate recusal, are not affected.

The provisions for requests for opinions have been narrowed to avoid, with one exception, the situation in which a person other than a State official<sup>2</sup> in the Judicial Branch requests comment on the official's own conduct. As explained in the proposed Committee note, the Judicial Ethics Committee believes that this narrowing avoids the need to opine on incomplete or inaccurate descriptions of conduct. It also may help to clarify the respective jurisdiction of the Judicial Ethics Committee and Commission on Judicial Disabilities. For the same purpose, the Judicial Ethics Committee contemplates asking requesters to use boilerplate language disavowing knowledge of pending or impending disciplinary action or law suit against the requester. Although the Judicial Ethics Committee does not see the need for inclusion of such language in the Code, for the Court's information, a draft form is set forth in a footnote to this Report.<sup>3</sup>

The exception to the general rule that a request must be as to the State official's own conduct is a provision that allows the Chief Judge of the Court of Appeals to request an opinion as to the proper interpretation of an ethics provision, generally. As noted in the proposed Committee note, the Committees know of instances in which a general interpretation of an ethical provision aids in the implementation of administrative duties or forewarns numerous State officials of situations that might give rise to violations but that the officials might not otherwise realize to be potentially violative. Hence, the proposed provision for requests by the Chief Judge of the Court of Appeals. The Committees considered allowing various other judges with administrative duties to make such requests but had concerns about the number of, and potential for overlap in, requests and, therefore, propose a practice similar to that for requesting opinions from the Attorney General.

Provisions are proposed to spell out the minimum contents of requests, to facilitate prompt response to inquiries. It is hoped that, to assist the Judicial Ethics Committee, State officials would include in the request, for example, citations to definitive opinions. In this regard, the Committees are recommending another concept patterned on practice of the Attorney General - the use of letters of advice, which are intended to provide the safe harbor of a full Judicial Ethics Committee opinion but to be issued in a shorter time frame. The Committees feel that, as to a number of issues, the answer is clear, but a written response is required from the Judicial Ethics Committee for the safe-harbor effect. After discussion, the Committees acceded to the request of the Commission on Judicial Disabilities that letters of advice be issued by a panel of at least three members of the Judicial Ethics Committee.

The Committees are recommending clarification that a request, as well as the response, is confidential. Hence, a requirement is added for a requester to specify an address to which response can be made, so that a business address need not be used should the requester wish otherwise. Note, however, the confidentiality may be negated as "required by law," as well as at the direction of the Court of Appeals. The Committees declined to endorse a recommendation of the Commission on Judicial Disabilities for information concerning the identity of requesters, perceiving a chilling effect on requests.

Provision is made for the Judicial Ethics Committee to decide that an opinion should be unpublished or published. This addition reflects current practice. As to published opinions, the Chair of the Judicial Ethics Committee, rather than the Secretary of the Judicial Conference, would control editing in accordance with the confidentiality requirements of the Rule. Recently, opinions have been written without the identifying information, to obviate the need for redaction.

Rule 16-813. Maryland Code of Judicial Conduct

**Preamble**

The most significant change proposed by the ABA Code (2000), and endorsed by the Judicial Ethics and Rules Committees, is the substitution of "shall" for "should" in numerous provisions of the Code of Judicial Conduct, making the affected provisions mandatory, rather than hortatory. As stated in the proposed Preamble, the use of "shall" or "shall not" in the text of a Canon is intended to impose a binding obligation, the violation of which can result in disciplinary action. This usage should afford clearer direction to judges as to the infractions that

could result in disciplinary proceedings.

The ABA Code (2000) Preamble refers to the Code as "provid[ing] guidance to judges and candidates for judicial office" and as "provid[ing] guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct." The Committees omit the former reference, as misleadingly incomplete in light of the numerous statutory provisions governing candidates, the proposed amendments to Rule 8.2 of the Maryland [Lawyers'] Rules of Professional Conduct set forth below, and the inapplicability of both the Code and the Rules of Professional Conduct to unsuccessful, non-lawyer candidates for an orphans' court. The Committees omit the limitation to judges from the latter reference, as too narrow given the potential application of the Code to successful candidates for judicial office. Accordingly, disclaimer of any intent to "discourag[e] candidates from seeking judicial office" is added.

Inclusion of references to pertinent ethics opinions, administrative orders and other documents in appropriate parts of the Code of Judicial Conduct was discussed, but the Committees concluded that references could become outdated. Accordingly, the Committees added the last paragraph of the proposed Preamble and an accompanying Committee note, as a reminder of other pertinent sources of ethical guidance.

### **Terminology**

The proposed Terminology section defines significant terms appearing in the proposed Code of Judicial Conduct - in the instance of "honorarium," in a Comment to proposed Canon 4. Several of the defined terms, "gift," "honorarium," and "member of the judge's household," incorporate provisions of the current Maryland Public Ethics Law applicable to judges, among other "State officials" in the Judicial Branch.

A substantive disagreement between the Judicial Ethics Committee and the Rules Committee concerns the definition of "significant financial interest." The Judicial Ethics Committee proposes conformance to the current Maryland Public Ethics Law provision. The Rules Committee proposes a definition that is derived from the definition of "financial interest" that is set forth in Code, State Government Article (1984, 1995 Replacement Volume and 1998 Supplement), §15-105 (n). At its October 5, 1999 open meeting on the One Hundred Forty-Sixth Report of the Rules Committee, the Court declined to adopt proposed amendments to Rules 16-813 and 16-814 that would have conformed the Comment following Canon 3C (1) of each Rule to the statutory definition

of "financial interest," as amended in 1999. The definition of "significant financial interest" recommended by the Rules Committee carries forward the 1999 directive of the Court. The Judicial Ethics Committee, however, believes that the Maryland Public Ethics Law, as currently enacted to cover all State officials, prevails over the Code of Judicial Conduct, and the Judicial Ethics Committee strongly recommends conformance to the current statute.

A definition of "impartial," "impartiality," and "impartially" serves as the linchpin of the August 2003 amendments to the ABA Code (2000). The definition encompasses concepts that are vital to the maintenance of an independent judiciary and provides a clear statement of the compelling state interest protected by the restrictions on a judge's or candidate's speech set forth in proposed Canons 3B (8) and (9), 4A, and 5B (1)(a) and (d). The Committees believe that the ABA approach comports with the constitutional principles enunciated in Republican Party of Minnesota v. White, 122 S. Ct. 2528 (2002), and have incorporated that approach into the proposed revised Code.

A non-substantive area of disagreement between the Judicial Ethics Committee and the Rules Committee concerns the definition of "know," which the Judicial Ethics Committee suggests be stated in the infinitive - thereby covering variations not listed in the ABA Code (2000) and Rules Committee's versions. This format corresponds to that of "require." The Rules Committee's version is based upon the ABA Code (2000) version, which includes the noun and adverbial forms of the concept of knowing, as well as the verb form. All of the forms of the word used in the proposed Canons are included in the definitional list recommended by the Rules Committee.

### Canon 1

Proposed Canon 1 sets forth general rules as to integrity and independence of the Judiciary. There are no disagreements with respect to proposed Canon 1.

The third and fourth sentences of the Comment are based on ABA Code (2000, amended 2003).

### Canon 2

Proposed Canon 2 sets forth the prohibitions against impropriety and the appearance of such. There are no disagreements with respect to proposed Canon 2.

The fourth sentence of the proposed Comment to Canon 2A is based on the ABA Code (2000, amended 2003).

Additions to Canon 2B expressly mention political relationships and employment offers and opportunities and require that the judge not allow judicial conduct to be improperly influenced or appear to be improperly influenced by such relationships, offers, or opportunities.

### Canon 3

Proposed Canon 3 relates to performance of judicial duties.

In proposed Canon 3, the Committees have diverged from the organization in ABA Code (2000) by recommending that the Canon begin with a general provision that sets forth standards generally applicable to all judicial duties - both adjudicative and administrative. This arrangement avoids the duplication and inconsistency in standards occurring in ABA Code (2000) with respect to adjudicative versus administrative functions.

Considerable discussion ensued with respect to the provisions governing public comment by judges in proposed Canon 3B (8). The Committees wish neither to foreclose, for example, lectures on the law whose currency demands allusion to pending cases nor to open the gates to comments suggesting a lack of regard for judicial propriety.

Two significant components of the August 2003 amendments to ABA Code (2000) are contained in proposed Canon 3. First, in recognition of the necessity of making all speech restrictions applicable to sitting judges as well as to candidates for judicial office, proposed Canon 3B (9) mirrors the restrictions set forth in proposed Canon 5B (1)(d), discussed below. An explanatory Comment as to the impartiality, independence, and integrity of the judiciary follows proposed Canon 3B (9). In order to track, as closely as possible, the provisions in ABA Code (2000, amended 2003) concerning restrictions on judicial speech, the ABA terminology of "pending" and "impending" proceedings is used in proposed Canon 3B (9) and the accompanying Comment, although the more modern terminology of a proceeding "before the judge ... or such proceeding is imminent" is used in the definition of "significant financial interest" in the Terminology section of the proposed revised Code.

The second significant component of the August 2003 amendments added to the ABA Code (2000), Canon 3 provides for recusal as a remedy for preserving judicial impartiality. Proposed Canon 3D (1)(e) requires recusal if a judge, while a judge or a candidate for judicial office, has made a statement

within the ambit of the speech restrictions set forth in the Code.

With respect to proposed Canon 3F (2) and (3), the Committees decided to track the ABA Code (2000) provision, while noting that proposed Canon 3F (2) refers to a judge's "fitness for office," but proposed Canon 3F (3) - as do the Rules of Professional Conduct - refers to a lawyer's "honesty, trustworthiness, or fitness as a lawyer." Aside from questioning whether "honesty" and "trustworthiness" are not subsumed under "fitness" in the case of a lawyer as well as a judge, the Committees debated whether the introductory clause, "[i]f other corrective measures ... were not successful," should modify only fitness." That is, should Canon 3F (3) read as follows:

A judge shall inform the Attorney Grievance Commission of facts known to the judge that raise a substantial question as to:

- (1) a lawyer's honesty or trustworthiness; and
- (2) if other corrective measures are not appropriate or, if attempted, were not successful, a lawyer's fitness as a lawyer in other respects.

#### Canon 4

Proposed Canon 4 deals with extra-judicial activities.

The Committees disagree as to the language of a proposed Committee note following proposed Canon 4B, with the only substantive difference the inclusion of the phrase "not to lecture to probationers who might be brought back before the court" in the Judicial Ethics Committee's version.

Another portion of the Code about which the Committees were unable to agree is proposed Canon 4C (2). The Judicial Ethics Committee believes that the Canon should retain the current reference to acceptance of "advisory" positions. This version is, on its face, narrower than the Rules Committee's version but, the Judicial Ethics Committee feels, more consistent with dual and incompatible office limitations. The Rules Committee omits the word "advisory" in its version of the proposed Canon, believing that the Canon should be worded so that, for example, judges may serve on the State Commission on Criminal Sentencing Policy, the duties of which are not merely advisory, and are not automatically precluded from serving on commissions such as a county's charter revision commission.

Canon 4E has been revised to allow a judge to serve as a fiduciary for a "member of the judge's family," thereby obviating

the need for the provision of current Canon 4G that enables a judge, in "extraordinary cases," to serve as attorney-in-fact or

guardian for a "person with whom the judge maintains a close familial relationship."

The introductory clause of proposed Canon 4H, "[u]nless otherwise prohibited by law," and the first paragraph of the proposed Comment have been added as a warning about the restrictions in the Maryland Public Ethics Law on acceptance of honoraria.

#### Canon 5

Proposed Canon 5 pertains to political activity of judges.

As required after White, supra, the "announce" clause is omitted from proposed Canon 5B. In conformance with ABA Code (2000, amended 2003), the word "impartiality" is added to proposed Canon 5B (1)(a) and a newly constructed clause that collapses certain portions of the "commit" clause into the "pledges and promises" clause, with additional modifications, is proposed as Canon 5B (1)(d). As stated in the Report of the ABA Committees that drafted the August 2003 amendments,

The new wording of the provision provides a clear enumeration of the restricted speech ("with respect to cases, controversies or issues that are likely to come before the court") and a clear statement of what is being protected by the restriction of this speech ("inconsistent with the impartial performance of the adjudicative duties of the office"). In the opinion of the Working Group, and adopted by both Standing Committees, these amended provisions of Canon 5A (3)(d) [Canon 5B (1)(d) of the proposed revised Maryland Code] provide the appropriate construction to balance the First Amendment interest in vigorous and informative campaign speech with the compelling state interest in performing the duties of the judicial office impartially.<sup>4</sup>

Proposed Canon 5 C has been modified to include the status of lawyers as candidates.

Proposed Canon 5D is new and is derived in part from ABA Code (2000), Canon 5E except the first sentence. The provisions of Canon 5 that are applicable to lawyers who are candidates for judicial office have been included in proposed amendments to Rule 8.2 of the Maryland [Lawyers'] Rules of Professional Conduct.

Under Canon 5D, the status of the candidate during the campaign - whether the candidate is a judge or a lawyer who is not a judge - determines whether Canon 5 or Rule 8.2 (b) of the Maryland Rules of Professional Conduct governs the behavior of the candidate. The status of the candidate when disciplinary proceedings are initiated determines whether the judicial disciplinary process or the attorney disciplinary process is used.

## Canon 6

Proposed Canon 6 is titled "Compliance."

The Committees recommend that the application of the Maryland Code of Judicial Conduct be expanded to bring recalled judges within the ambit of proposed Canon 4D (1)(a), which bars extra-judicial business or financial dealings that "reasonably would be perceived to violate Canon 2B." The Judicial Ethics Committee believes, however, that consideration of the Code *viz á viz* recalled judges is needed in greater detail than is possible within the scope of this project. In any event, the Committee feels that recalled judges should be included as members of any such study group.

## Rule 16-814. Maryland Code of Conduct for Judicial Appointees

The current Code of Conduct for Judicial Appointees is patterned after the current Maryland Code of Judicial Conduct. Accordingly, the Committees have prepared proposed new Rule 16-814, Maryland Code of Conduct for Judicial Appointees, generally reflecting the proposed revisions to the Code of Judicial Conduct.

## Preamble

The proposed Preamble is derived from the first sentence of the current Rule and the accompanying Committee note. The current definition of "judicial appointee" is proposed to be transferred to the proposed "Terminology" section of this Code.

## Terminology

The proposed Terminology section repeats those definitions proposed in the Code of Judicial Conduct that appear in the Code of Conduct for Judicial Appointees, substituting "judicial appointee" for "judge." Following the proposed new definition of "judicial appointee" is a cross reference to Rule 16-816 a, where there is a definition of judicial appointee for purposes of

filing a financial disclosure statement.

#### Canon 1

Proposed Canon 1 retains the current reference to "judicial system" but otherwise tracks the parallel Canon 1 proposed for the Code of Judicial Conduct.

#### Canon 2

Proposed Canon 2 retains the current reference to "position," in some instances substituting it for "appointment," and the current references to "judicial system" and "official" conduct and responsibilities but generally tracks the parallel Canon 2 proposed for the Code of Judicial Conduct, except that in the Comment to proposed Canon 2B, the sentence on initiating communications with a sentencing judge or corrections or probation officer is omitted.

#### Canon 3

Proposed Canon 3 tracks the parallel Canon 3 proposed for the Code of Judicial Conduct except as to retention of "position," "judicial system," and recusal of a part-time judicial appointee, and the omission of "jurors" and "court officials" in proposed Canon 3B (5), communication with a jury (proposed Canon 3B (10)), and supervisory authority as to judicial performance (proposed Canon 3C (3)). In proposed Canon 3B and C, references to individuals who are subject to the judicial appointee's direction and control use the phrase "personnel subject to ..." or "court personnel and others subject to ...," as appropriate.

A non-substantive area of disagreement between the Judicial Ethics Committee and the Rules Committee involves the tagline for Canon 3B. The Judicial Ethics Committee favors retaining the phrase "Adjudicative Responsibilities," which is used substantively in proposed Canon 3B (6)(f), while the Rules Committee suggests that the phrase "Responsibilities for the Conduct of Proceedings" is more appropriate.

In the Comment to proposed Canon 3B (6), references in the proposed Code of Judicial Conduct to requesting a brief *amicus curiae* and to communications with appellate courts are omitted.

#### Canon 4

In proposed Canon 4, "extra-official" and "position" are retained.

The Comments to proposed Canon 4C and D (5) in the Code of Judicial Conduct are omitted.

In proposed Canon 4D (1)(b), "the appointing court in matters relating to the judicial appointee's duties and authority" is retained. The exception for acceptance of campaign contributions by a judge (proposed Canon 4D (4)(a) of the Code of Judicial Conduct) is omitted.

The paragraph in the Comment to proposed Canon 4D as to inapplicability to part-time judicial appointees is retained from the current Code.

Proposed Canon 4E (Fiduciary Activities) does not track proposed Canon 4F of the Code of Judicial Conduct, because the provisions in the current Codes are not parallel and the statutory limitations are applicable only to judges (and to clerks and registers).

The proposed Comment to Canon 4F retains the reference to "applying methods of alternative dispute resolution that are included in the judicial appointee's official duties," which does not appear in the parallel provision of the Code of Judicial Conduct.

Proposed Canon 4G (2) substitutes the phrase "[t]o the extent not expressly prohibited by law or the appointing authority and subject to other applicable provisions of this Code" for the limiting reference to "the extent permitted by ... the appointing authority" in the current Code of Conduct for Judicial Appointees. The parallel Canon 4G (2)(a) of the proposed Code of Judicial Conduct refers "[t]o the extent expressly allowed by law and subject to other applicable provisions of this Code."

The word "should" is retained in proposed Canon 4G (5). The statutory provision governing judges allows, rather than requires, an agreement with a former law firm - although mandating recusal. The Judicial Ethics Committee has proposed, as described above, deletion of the comparable provisions of the current Code of Judicial Conduct for review of such agreements (Canon 4I (b) (2)-(4) of Maryland Code (1987)).

## Canon 5

In proposed Canon 5B (1)(d), the reference to "office" tracks the parallel Canon proposed in the Code of Judicial

Conduct, rather than using "position" as elsewhere in the Code of Conduct for Judicial Appointees. This usage reflects that the "office" is the judicial office for which the judicial appointee is campaigning.

Proposed Canon 5D duplicates proposed Code of Judicial Conduct Canon 5D, which applies to lawyer-candidates, but there is a gap, however, with respect to, e.g., a District Court commissioner running for Orphans' Court judge. Accordingly, the provision (other than the reference to incumbent judges) is repeated here for completeness.

#### Canon 6

In proposed Canon 6, the current reference to grounds for disciplinary action is retained, since the current reference differs from the comparable, current provision in the Code of Judicial Conduct.

#### Rule 16-816. Financial Disclosure Statement - Judicial Appointees

The proposed amendments to Rule 16-816 require that all masters and District Court commissioners - whether full- or part-time - file financial disclosure statements. Currently, a part-time master or commissioner is required to file only if he or she meets the earnings requirements set forth in section a of the Rule.

Code, State Government Article, §15-610 (a) requires the Court of Appeals to adopt rules that require the individuals listed in §15-601 (b) to file a financial disclosure statement. Because the latter Code section states that judicial appointees are defined in Rule 16-814, a cross reference to Rule 16-816 a is proposed to be added following the definition of judicial appointee in the Terminology section of Rule 16-814.

In addition, a cross reference to the Terminology section of Rule 16-814 is proposed to be added following section a of Rule 16-816.

#### Maryland [Lawyers'] Rules of Professional Conduct, Rule 3.5, Impartiality and Decorum of the Tribunal

Rule 3.5 of the Maryland [Lawyers'] Rules of Professional

Conduct is proposed to be amended to prohibit a lawyer from discussing potential employment of a judge before whom the lawyer or the lawyer's firm has a pending matter. The amendment is proposed in conjunction with proposed changes to Canon 2B of the Code of Judicial Conduct and the Code of Conduct for Judicial Appointees that require judges and judicial appointees not to allow their conduct to be improperly influenced or appear to be improperly influenced by employment offers or opportunities.

Maryland [Lawyers'] Rules of Professional Conduct,  
Rule 8.2, Judicial and Legal Officials

The proposed amendments to Rule 8.2 conform section (b) to the applicable standards pertaining to candidates for judicial office set forth in proposed revised Canon 5B of the Maryland Code of Judicial Conduct. The Rules Committee believes that the prohibitions set forth as Canon 5B (1)(b) and (1)(c) may not be constitutional as applied to lawyers who are not judges. Therefore, these prohibitions have not been included in Rule 8.2.

The Judicial Ethics Committee and the Rules Committee express their gratitude for the invaluable assistance of the Hon. Sally D. Adkins and M. Peter Moser, Esq., in revising Rule 16-813, Maryland Code of Judicial Conduct.

Because of the extensive proposed revisions to them, Rules 16-813 and 16-814 are presented as new Rules, recommended to be adopted contemporaneously with the rescission of the current Rules. For the Court's reference, included as an Appendix to this Report and proposed rules changes are marked copies of current Rules 16-813 and 16-814, shown with the amendments that would be required in order to change them to the proposed revised Rules.

For the guidance of the Court and the public, following each proposed rule change, except proposed new Rule 16-813 for which a detailed Source note is provided, is a Reporter's Note describing the reasons for the proposal and any changes that would be effected in current law or practice. We caution that these Reporter's Notes were prepared initially for the benefit of the Rules Committee; they are not part of the Rules and have not been debated or approved by the Committee; and they are not to be regarded as any kind of official comment or interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.



Respectfully submitted,

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Chairperson, Judicial Ethics Committee

Joseph F. Murphy, Jr.  
Chairperson, Rules Committee

Linda M. Schuett  
Vice Chairperson, Rules Committee

CMC/JFM/LMS:cdc

<sup>1</sup>/ Md. Constitution, Article IV, §4A provides, in pertinent part, as follows:

(d) The term of office of each member [of the Commission on Judicial Disabilities] is four years commencing on January 1 following the expiration of the member's predecessor's term. A member may not serve more than two four-year terms, or for more than a total of ten years if appointed to fill a vacancy.

<sup>2</sup>/ Code, State Government Article, §15-102 (11) defines "State official" as:

- (1) a constitutional officer or officer-elect in an executive unit;
- (2) a member or member-elect of the General Assembly;
- (3) a judge or judge-elect of a court under Article IV, §1 of the Constitution;
- (4) a judicial appointee as defined in Maryland Rule 16-814;
- (5) a State's Attorney;
- (6) a clerk of the circuit court;

- (7) a register of wills; or
- (8) a sheriff.

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Judicial Ethics Committee  
Request for Opinion

.....  
To be completed by Requester

Name of Requester: .....

Date of Request: .....

Deadline for Response: .....

I understand that an opinion or letter of advice, if any, issued in response to this request has no retroactive effect and, as to future conduct, obviates a violation of applicable law only to the extent that I am in compliance with the opinion or letter of advice. The Judicial Ethics Committee can best respond if I provide full information in connection with the conduct to which the request pertains.

To the best of my knowledge, the conduct to which the request pertains is not the subject of a pending or impending investigation or other action of the Commission on Judicial Disabilities or of a court.

Signature of Requester: .....

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2003 Report of the American Bar Association Standing Committee on Judicial Independence and the Standing Committee on Ethics and Professional Responsibility, at 13.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-812.1, as follows:

Rule 16-812.1. JUDICIAL ETHICS COMMITTEE

(a) Definitions

In this Rule the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(1) Committee

"Committee" means the Judicial Ethics Committee.

(2) Ethics Provision

"Ethics provision" means:

(A) a provision of Code, State Government Article, Title 15, Subtitle 5 or 6;

(B) as to a judge, also a provision of the Maryland Code of Judicial Conduct; and

(C) as to a judicial appointee as defined in Rule 16-814, also a provision of the Maryland Code of Conduct for Judicial Appointees.

(3) State Official in Judicial Branch

"State official in the Judicial Branch" means an individual who is in the Judicial Branch and is a State official, as defined in Code, State Government Article, §15-102.

(b) Creation

There is a Judicial Ethics Committee.

(c) Composition

The Committee consists of nine members appointed by the Chief Judge of the Court of Appeals. Of the nine members:

(1) one shall be a judge of the Court of Special Appeals;

(2) one shall be a judge of a circuit court;

(3) one shall be a judge of the District Court;

(4) three shall be judges of the Court of Special Appeals, a circuit court, the District Court, or an orphans' court;

(5) one shall not be a judge or other officer or employee of the Judicial Branch of the State government or a lawyer; and

(6) two shall not be judges.

(d) Term

(1) The term of a member is three years and begins on July 1.

(2) The terms of the members shall be staggered so that the terms of three members expire each year.

(3) At the end of a term, a member continues to serve until a successor is appointed.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

(5) A member appointed on or after July 1, 2005, may not serve more than two consecutive three-year terms.

(e) Chair and Vice Chair

The Chief Judge of the Court of Appeals shall designate one judicial member as the Chair of the Committee and one judicial member as the Vice Chair. In the absence or disability of the Chair or upon an express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(f) Meetings

The Committee shall meet at the times and places that the Chair directs.

(g) Quorum

The presence of a majority of the members then serving constitutes a quorum for the transaction of all business other than adjournment of a meeting for lack of a quorum.

(h) Committee Staff

The Committee shall have staff as the State Court Administrator directs.

(i) Duties

In addition to its other duties imposed by law, the Committee:

(1) shall give advice, as provided in this Rule, with respect to the application or interpretation of the Maryland Code of Judicial Conduct and the Maryland Code of Conduct for Judicial Appointees;

(2) is designated as the body to give advice with respect to

the application or interpretation of any provision of Code, State Government Article, Title 15, Subtitles 5 and 6, to a State official in the Judicial Branch;

(3) shall review timely appeals from the State Court Administrator's decision not to extend, under Rule 16-815 or 16-816, the period for filing a financial disclosure statement;

(4) shall determine, under Rule 16-815 f or Rule 16-816 g, whether to allow a judge or judicial appointee to correct a deficiency as to a financial disclosure statement or to refer the matter, as to a judge, to the Commission on Judicial Disabilities or, as to a judicial appointee, to the State Ethics Commission; and

(5) shall submit to the Court of Appeals recommendations for necessary or desirable changes in any ethics provision.

(j) Opinions and Letters of Advice

(1) Requester

A request for the opinion of the Committee may be made only by:

(A) a State official in the Judicial Branch, as to the proper application of an ethics provision to that State official; or

(B) the Chief Judge of the Court of Appeals, as to the proper interpretation of an ethics provision.

(2) Form of Request

Each request for an opinion of the Committee shall:

(A) be in writing;

(B) describe the act or activity about which the opinion is requested;

(C) include all documentation or other information necessary for the Committee to perform its function, which may include citation to rules, statutes, and published opinions of the Committee that the requester believes to be relevant to the request; and

(D) include an address to which the Committee shall direct correspondence.

(3) Opinion

The Committee may render an opinion, in writing, with regard to any request made under this Rule and shall decide whether an opinion is to be published or unpublished. The Chair shall cause to be prepared an edited version of each opinion designated to be published, in which the identity and specific court or geographical location of the requester and the identity of other persons mentioned in the opinion shall not be disclosed and shall have the opinion published in the manner that the State Court Administrator deems proper.

(4) Letter of Advice

If the Chair decides that the full Committee cannot provide a timely written opinion or that prior opinions of the Committee render full Committee review unnecessary, a panel of not less than three members appointed by the Chair may issue a

written letter of advice, which shall not be published and shall have no precedential effect.

(5) Protection from a Charge of Violation

A State official in the Judicial Branch who requests an opinion as to application of an ethics provision and is in compliance with an opinion of, or letter of advice issued for, the Committee is protected from a charge of violation of that ethics provision.

Committee note: The Judicial Ethics Committee noted that, given the binding effect of opinions, they generally should be issued only to a State official in the Judicial Branch requesting advice as to the official's own conduct. This practice would avoid comment either on hypothetical conduct or conduct incompletely or inaccurately described. However, there may be instances, such as those in which an opinion would affect numerous State officials in the Judicial Branch or the implementation of administrative duties, that make it appropriate to have a mechanism for requesting an interpretation of an ethics provision but not an opinion as to its application. Therefore, language in former Maryland Code of Judicial Conduct (1987), Canon 7 suggesting that persons other than a State official in the Judicial Branch could request an opinion has been omitted, but a provision for the Chief Judge of the Court of Appeals to request guidance on interpretation has been added. The addition is patterned on the practice for requesting an opinion from the Attorney General.

(6) Filing; Confidentiality

The Chair shall file with the State Court Administrator every opinion of, and letter of advice issued for, the Committee. A request and the letter of advice or the opinion, other than the edited version designated to be published, filed in response are confidential and, unless otherwise directed by the Court of Appeals or required by law, are not public information.

Cross reference: See Rule 16-813 (Maryland Code of Judicial Conduct) and Rule 16-814 (Maryland Code of Conduct for Judicial Appointees).

Source: This Rule is derived from former Maryland Code of Judicial Conduct (1987), Canon 7, as it was set forth in former Rule 1231 (renumbered Rule 16-813 by Rules Order dated January 18, 1996, effective July 1, 1996).

#### REPORTER'S NOTE

The Judicial Ethics and the Rules Committee propose that Canon 7 of the current Maryland Code of Judicial Conduct (1987), be changed organizationally, by setting it forth as a rule separate from the Maryland Code of Judicial Conduct, and substantively, by supplementing the provisions on appointment, term of membership, officers, meetings, quorum, staff, form of requests, identity of requesters, form and effect of responses by or for the Judicial Ethics Committee, and publication of opinions.

The Committees have included in the list of responsibilities reference to duties stated in other Maryland law. The duty to review termination agreements with law firms, stated in Maryland Code of Judicial Conduct (1987), Canon 4I (2) through (4), is omitted in light of the proposed deletion of those provisions.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-813, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

Preamble

It is fundamental to our legal system that our laws be interpreted by a competent, fair, honorable, and independent judiciary. Such a judiciary is essential to the American concept of justice. Intrinsic to all sections of this Code are the precepts that, individually and collectively, judges must honor and respect the judicial office as a public trust and strive to enhance and maintain public confidence in our legal system. A judge, as arbiter of facts and law for the resolution of disputes, is a highly visible symbol of government under the rule of law.

This Code sets forth basic standards for the conduct of all judges and provides guidance in establishing and maintaining high standards of judicial and personal conduct.

This Code consists of a Terminology section, Canons, which set forth specific rules of conduct, and Comments, which provide guidance on the purpose and meaning of the Canons but are not intended as statements of additional rules.

When "shall" or "shall not" is used in the text of a Canon,

it is intended to impose a binding obligation, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding obligation under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, refers to action that is not covered by specific prohibitions.

Even as to binding obligations, however, it is not intended that every transgression result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should depend on factors such as the seriousness of the transgression, whether the transgression is isolated or part of a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

The Canons are rules of reason that should be applied in the context of all relevant circumstances and in a manner that is consistent with constitutional requirements, statutes, other court rules, and decisional law. This Code should be construed in a way that neither infringes on the essential independence of judges in making judicial decisions nor discourages candidates from seeking judicial office.

This Code includes a structure for regulating conduct through disciplinary agencies, when appropriate. It is not intended to be a basis for civil liability or criminal

prosecution. This Code should not be invoked for mere tactical advantage in a proceeding.

In interpreting this Code, attention should be given to the opinions of the Judicial Ethics Committee and, if appropriate, the Committee should be asked for a written letter of advice or a binding opinion.

Committee note: This Code replaces the Maryland Code of Judicial Conduct originally adopted by Rules Order dated November 21, 1986, effective July 1, 1987, as amended from time to time ("Maryland Code (1987)"). This Code is derived from the Maryland Code (1987) and the Model Code of Judicial Conduct adopted by the American Bar Association in 2000, with amendments in August 2003. The derivation of particular provisions of this Code is described in greater detail in the Source Note at the end of this Code.

The Judicial Ethics Committee has published opinions on issues such as a judge owning commercial real estate (permissible only if no appearance of impropriety would result), accepting an expense-paid trip, and granting a stet or probation conditioned on a criminal defendant making a monetary donation. Administrative Orders of the Chief Judge of the Court of Appeals also may provide guidance. For example, as to the anti-nepotism policy of the Judicial Branch, see the Orders dated October 3, 1996 and January 31, 1997.

## Terminology

*Terms explained below are noted in boldface type in the Canons and Comments where they appear.*

In this Code the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) **Fiduciary**

**"Fiduciary"** includes administrator, attorney-in-fact by power of attorney, executor, guardian, personal representative, and trustee.

Cross reference: See Canons 3D (1) (c) and (2) and 4E. For a definition of "guardian," see Rule 1-202 (j).

(b) **Gift**

**"Gift"** has the meaning stated in Code, State Government Article, §15-102.

Cross reference: See Canon 4D (5).

(c) **Honorarium**

**"Honorarium"** has the meaning stated in Code, State Government Article, §15-102.

(d) **Impartial, Impartiality, or Impartially**

**"Impartial," "impartiality,"** or **"impartially"** denotes absence of bias or prejudice in favor of, or against, a party or class of parties, as well as maintaining an open mind in considering each issue that is or may come before the judge.

Cross reference: See Canons 2A; 3A, B (9), and D (1); 4A (1); and 5B (1)(a) and (d).

Alternative A - Rules Committee's Version

(e) **Knowingly, Knowledge, Known, or Knows**

"Knowingly," "knowledge," "known," or "knows" means actual knowledge of the fact in question. Actual knowledge may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(iii) and (iv) and F (2) and (3) and 5B (1)(e).

Alternative B - Judicial Ethics Committee's Version

(e) **Know**

"Know" means to have actual knowledge of the fact in question, as may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(iii) and (iv) and F (2) and (3) and 5B (1)(e).

(f) **Member of Judge's Family**

"Member of the judge's family" means a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom a judge maintains a close familial relationship.

Cross reference: See Canons 3D (1)(c) and 4E (1)(b) and (d) and G (1).

(g) **Member of Judge's Household**

"Member of the judge's household" has the meaning stated in Code, State Government Article, §15-102 for "member of household."

Cross reference: See Canons 3D (2) and 4D (5).

(h) **Political Organization**

**"Political organization"** means a political party or other group, the principal purpose of which is to further the election or appointment of a candidate to political office.

Cross reference: See Canon 5B (1)(b) and (c).

(i) Require

**"Require,"** in the context that a judge **"require"** certain conduct of others, means that the judge is to take reasonable steps to direct and control the conduct of those persons.

Cross reference: See Canon 3B (3), (5), (8), and (11) and C (2).

(j) Significant Financial Interest

**Alternative A - Rules Committee's Version**

(1) **"Significant financial interest"** means ownership of:

(A) an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year;

(B) more than 3% of a business entity; or

(C) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

**Alternative B - Judicial Ethics Committee's Version**

(1) **"Significant financial interest"** means:

(A) ownership of an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than

\$1,000 per year; or

(B) ownership by a judge or judge's spouse of:

(i) more than 3% of a business entity; or

(ii) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

(2) In applying this definition:

(A) ownership of an interest in a mutual or common investment fund that holds a security is not ownership of the security unless:

(i) the judge [**Alternative B - Add: "or spouse" here**] participates in the management of the fund; or

(ii) there is before the judge a proceeding that could substantially affect the value of the interest, or such proceeding is imminent;

(B) ownership of a government security is not a **significant financial interest** in the issuer unless there is before the judge a proceeding that could substantially affect the value of the security, or such proceeding is imminent;

(C) neither a deposit in a financial institution nor a proprietary interest such as or similar to that of a depositor in a mutual savings association, member in a credit union, or policy holder in a mutual insurance company is a **significant financial interest** in the entity unless there is before the judge a proceeding that could substantially affect the value of the

deposit or interest, or such proceeding is imminent; and

(D) an ownership interest in a security held by a charitable, civic, educational, fraternal or sororal, or religious organization will not be imputed to a judge merely because the judge or the judge's child, parent, or spouse is an adviser to or director or officer of, or otherwise actively participates in, the organization.

Cross reference: See Canon 3D (1)(c) and (d)(iii).

(k) Third Degree of Relationship

**"Third degree of relationship"** means the relationship between a judge and the following individuals: a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece.

Cross reference: See Canon 3D (1)(d).

## CANON 1

### Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge shall observe high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

#### COMMENT

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their fairness, honesty, probity, soundness of character, and uprightness. An independent judiciary is one free of inappropriate outside influence. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the **impartiality** of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

## CANON 2

### Avoidance of Impropriety and the Appearance of Impropriety

A. A judge shall avoid impropriety and the appearance of impropriety. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the **impartiality** and integrity of the judiciary.

#### COMMENT

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on a judge's speech imposed by Canon 3B (8) and (9) that are indispensable to the maintenance of the **impartiality**, independence, and integrity of the judiciary.

The obligation to avoid impropriety and the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the obligation is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in this Code. Actual improprieties under this standard include violations of law, other specific provisions of this Code, or other court rules. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with competence, **impartiality**, and integrity is impaired. See also the Comment to Canon 2C.

B. A judge shall not allow judicial conduct to be improperly influenced or appear to be improperly influenced by a family, political, social, or other relationship or by an employment

offer or opportunity. A judge shall not lend or use the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence judicial conduct. A judge shall not testify voluntarily as a character witness.

#### COMMENT

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage, such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge also must avoid lending or using the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a **member of the judge's family**. As to the acceptance of awards, see Canon 4D (5)(c) and the accompanying Comment.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may serve as a reference or provide a letter of recommendation based on the judge's own **knowledge**. A judge must not initiate, however, a personal communication of information to a sentencing judge or a corrections or probation officer but may provide to such officials information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of judicial office in support of the party for whom the judge testifies. A judge may, however, testify when properly subpoenaed.

Committee note: The Judicial Ethics Committee has held that a judge's judicial and non-judicial activities should not raise questions as to improper favoritism, partiality, or influence due to familial or social connections, indebtedness (such as might arise through referral of business to family or friend), political endorsement, acceptance of gifts, fund-raising, or entrepreneurial activities.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of national origin, race, religion, or sex.

#### COMMENT

Membership of a judge in an organization that practices invidious discrimination on the basis of national origin, race, religion, or sex gives rise to perceptions that the judge's **impartiality** is impaired. It is therefore inappropriate for a judge to continue to hold membership in an organization that the judge **knows**, or reasonably should **know**, practices and will continue to practice such invidious discrimination so as to give rise to the perception that the judge's **impartiality** is impaired. Membership in an organization would not be prohibited unless that membership would reasonably give rise to a perception of partiality. Certain organizations - such as congregational brotherhoods, sisterhoods, or bowling leagues - may well be restricted to individuals belonging to the particular congregation and therefore to those sharing a particular religious belief, but it is unlikely that membership in such an organization would cause people reasonably to believe that the judge is partial.

Whether an organization practices and will continue to practice that kind of invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined merely from an examination of an organization's current membership rolls but may depend on (1) the nature and purpose of the organization, (2) any restrictions on membership, (3) the history of the organization's selection of members, and (4) other relevant factors such as that the organization is dedicated to the preservation of cultural, ethnic, or religious values of legitimate common interest to its members, or that it is, in fact and effect, an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership, on the basis of national origin, race, religion, or

sex, individuals who otherwise would be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of national origin, race, religion, or sex, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 for a judge to arrange a meeting at a club that the judge **knows** practices invidious discrimination on the basis of national origin, race, religion, or sex, in its membership or other policies, or for the judge to use such club regularly. Moreover, public manifestation by a judge of the judge's **knowing** approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the **impartiality** and integrity of the judiciary, in violation of Canon 2A.

When a judge learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in all other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

## CANON 3

### Performance of Judicial Duties

In the performance of judicial duties, the following standards apply.

#### A. GENERAL RESPONSIBILITIES.

A judge shall perform the duties of judicial office diligently, **impartially**, and without having or manifesting bias or prejudice, including bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status.

#### COMMENT

A judge must perform judicial duties fairly and **impartially**. A judge who manifests bias of any kind in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial. For example, a judge must refrain from comment, gesture, or other conduct that could reasonably be perceived as sexual harassment.

#### B. ADJUDICATIVE RESPONSIBILITIES.

(1) A judge shall be faithful to the law and maintain professional competence in it.

(2) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall **require** order and decorum in proceedings

before the judge.

(4) A judge shall be dignified.

(5) A judge shall be courteous to and patient with jurors, lawyers, litigants, witnesses, and others with whom the judge deals in an official capacity and shall **require** similar conduct of lawyers and of court officials, staff, and others subject to the judge's direction and control.

#### COMMENT

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be businesslike and efficient while being deliberate and patient.

(6) (a) A judge shall accord to every person who has a legal interest in a proceeding pending before the judge, or that person's lawyer, the right to be heard according to law.

(b) While presiding over a proceeding, a judge shall neither initiate, permit, or consider *ex parte* communications nor consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as otherwise provided in Canon 3B (6).

(c) *Ex parte* communications that relate to scheduling or other administrative purposes or emergencies and not to substantive matters or issues on the merits are authorized, if: (i) circumstances require; (ii) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the communication; (iii) the judge makes provision

promptly to notify all other parties as to the substance of the *ex parte* communication; and (iv) the judge affords the parties reasonable opportunity to respond.

(d) With the consent of the parties, a judge may confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding if the judge: (i) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice; and (ii) affords the parties reasonable opportunity to respond.

(f) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities and with other judges.

(g) A judge may initiate or consider an *ex parte* communication when expressly authorized by law to do so.

#### COMMENT

The prohibition against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent practicable, all parties or their lawyers must be included in communications with a judge.

Whenever Canon 3B (6) requires the presence of, or notice to, a party, it is the party's lawyer or, if the party is unrepresented, the party who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

Canon 3B (6) allows for limited *ex parte* communication to facilitate scheduling and other administrative purposes and to accommodate emergencies. Even then, however, a judge must discourage *ex parte* communication and allow it only if all of the criteria stated in Canon 3B (6) clearly are met. A judge must disclose to all parties all *ex parte* communication described in Canon 3B (6)(c) and (e) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented, except matters of which the court properly can take judicial notice.

A judge may request a party to submit proposed findings of fact and conclusions of law if all of the other parties are apprised of the request and given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Canon 3B (6) is not violated through law clerks or other personnel on the judge's staff.

If communication between a trial judge and appellate court with respect to a proceeding is permitted, a copy of all written communications and the substance of all oral communications should be provided to all parties.

(7) A judge shall dispose of the business of the court efficiently, fairly, and promptly.

#### COMMENT

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials and litigants and their lawyers cooperate to that end.

(8) A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might

reasonably be expected to affect the outcome of that proceeding or to impair the fairness of that proceeding and shall **require** similar abstention on the part of court personnel subject to the judge's direction and control. Canon 3B (8) does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.

COMMENT

"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers in this regard is governed by Rule 3.6 of the Maryland [Lawyers'] Rules of Professional Conduct.

(9) With respect to a case, controversy, or issue that is likely to come before the court, a judge shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office.

COMMENT

Canon 3B (8) and (9) restrictions on a judge's speech are essential to the maintenance of the **impartiality**, independence, and integrity of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that a judge abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition.

(10) At the conclusion of a jury trial, the judge shall not communicate to the jury the judge's praise or criticism of the verdict but may thank the jurors for their public service.

## COMMENT

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and **impartial** in a subsequent case.

(11) A judge shall **require** lawyers in proceedings before the judge to refrain from manifesting, by word or conduct, bias or prejudice based upon age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. Canon 3B (11) does not preclude legitimate advocacy when such status or other similar factor is an issue in a proceeding.

(12) Unless recusal is appropriate, a judge shall hear and decide matters assigned to the judge.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records) and Code, Tax-General Article, §13-1018 (tax information).

### C. ADMINISTRATIVE RESPONSIBILITIES.

(1) A judge shall discharge the judge's administrative responsibilities without favoritism or nepotism and shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall **require** court officials, staff, and others subject to the judge's direction and control to observe the standards of diligence and fidelity that apply to the judge and to refrain from manifesting bias or prejudice in the performance

of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before those judges and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments and shall not approve compensation of appointees beyond the fair value of services rendered.

#### COMMENT

Consent by the parties to an appointment or an award of compensation does not relieve a judge of the obligation prescribed by Canon 3C (4).

#### D. RECUSAL.

(1) A judge shall recuse himself or herself from a proceeding in which the judge's **impartiality** might reasonably be questioned, including an instance when:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer or extra-judicial **knowledge** of a disputed evidentiary fact concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

COMMENT

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of Canon 3D (1)(b); a judge formerly employed by a governmental agency, however, should not participate in a proceeding if the judge's **impartiality** might reasonably be questioned because of such association.

(c) the judge **knows** that he or she, individually or as a **fiduciary**, or a **member of the judge's family**, has a **significant financial interest** in the subject matter in controversy or in a party to the proceeding;

COMMENT

There may be situations that involve a lesser financial interest but nonetheless require recusal because of the judge's own sense of propriety. Conversely, there are situations where participation may be appropriate even though the "financial interest" threshold is present. In the latter case, a judge first must obtain an opinion from the Judicial Ethics Committee with regard to the appropriateness, except as provided in Canon 3E (Non-recusal by Agreement).

(d) the judge, the judge's spouse, an individual within the **third degree of relationship** to either of them, or the spouse of such an individual:

(i) is a party to the proceeding or a director, officer, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

COMMENT

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of a judge is affiliated does not of itself require recusal of the judge. Under appropriate circumstances, the fact that "the judge's **impartiality** might reasonably be questioned" under Canon 3D (1),

or that the lawyer-relative is **known** by the judge to have an interest in the law firm that could be "substantially affected by the proceeding" under Canon 3D (1)(d)(iii), may require the judge's recusal.

(iii) is **known** by the judge to have a **significant financial interest** that could be substantially affected by the proceeding; or

(iv) is to the judge's **knowledge** likely to be a material witness in the proceeding; or

(e) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to:

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

(2) A judge shall keep informed about the judge's personal and **fiduciary** financial interests and shall make a reasonable effort to keep informed about the personal financial interests of each **member of the judge's household**.

#### COMMENT

Under Canon 3D (1), a judge must recuse himself or herself whenever the judge's **impartiality** might reasonably be questioned, regardless of whether any of the specific instances in Canon 3D (1) apply.

A judge must disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of recusal, even if the judge believes that there is no real basis for recusal.

By decisional law, the rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute or

might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, the judge must disclose on the record the basis for possible recusal and, if practicable, use reasonable efforts to transfer the matter promptly to another judge.

#### E. NON-RECUSAL BY AGREEMENT.

If recusal would be required by Canon 3D, the judge may disclose on the record the reason for the recusal. If after disclosure of any reason for recusal other than as required by Canon 3D (1)(a), the parties and lawyers, out of the presence of the judge, all agree that the judge need not recuse himself or herself, and the judge is willing to participate, the agreement of the parties shall be incorporated in the record, and the judge may participate in the proceeding.

#### COMMENT

This procedure gives the parties an opportunity to waive the recusal if the judge agrees. The judge may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the judge. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign a waiver agreement.

#### F. DISCIPLINARY RESPONSIBILITIES.

(1) A judge should take or initiate appropriate corrective measures with respect to the unprofessional conduct of another judge or a lawyer.

(2) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Commission on Judicial Disabilities of facts **known** to that judge that raise a substantial question as to another judge's fitness for office.

(3) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Attorney Grievance Commission of facts **known** to the judge that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(4) Acts of a judge required or permitted by Canon 3F (1), (2), or (3) shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

#### COMMENT

Permitting a judge to take "corrective" measures gives the judge a wide range of options to deal with unprofessional conduct. Appropriate corrective measures may include direct communication with the judge or lawyer who is believed to have committed the violation or other direct action if available. There may be instances of professional misconduct that would warrant a private admonition or referral to a bar association counseling service.

## CANON 4

### Extra-Judicial Activities

#### A. EXTRA-JUDICIAL ACTIVITIES IN GENERAL.

A judge shall conduct all extra-judicial activities so that they do not:

- (1) cause a substantial question as to the judge's capacity to act **impartially** as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

#### COMMENT

Complete separation of a judge from extra-judicial activities is neither possible nor desirable. A judge should not become isolated from the judge's community.

An extra-judicial activity, however, may be perceived to reflect on judicial behavior. For example, an expression of bias or prejudice by a judge, even outside the judge's judicial activities, may cause a substantial question as to the judge's capacity to act **impartially** as a judge. Expressions that may do so include jokes or other remarks demeaning individuals on the basis of their age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. See Canon 2C and the accompanying Comment.

#### B. AVOCATIONAL ACTIVITIES.

Subject to other provisions of this Code, a judge may lecture, speak, teach, write, and otherwise participate in other extra-judicial activities concerning the administration of

justice, the legal system, improvement of the law, and non-legal matters.

#### COMMENT

A judge is in a unique position to contribute to the administration of justice, the legal system, and improvement of the law, including the revision of substantive and procedural law and improvement of criminal and juvenile justice. As time may permit, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

The phrase "subject to other provisions of this Code" is used in this and other sections of Canon 4, primarily in connection with a judge's charitable, civic, or governmental activities, to remind judges that use of permissive language in various sections of this Code does not relieve a judge from the other provisions of this Code that apply to the specific conduct.

#### Alternative A - Rules Committee's Version

**Committee note:** The Judicial Ethics Committee has cautioned that a judge who agrees to speak at a political club should schedule the speech so as not to be present for political discussions, be reasonably available to other groups with similar invitations, and not speak at fund-raising events.

#### Alternative B - Judicial Ethics Committee's Version

**Committee note:** The Judicial Ethics Committee has cautioned judges to schedule a speech at a political club so as not to be present for political discussions, to be reasonably available to other groups with similar invitations, not to lecture to probationers who might be brought back before the court, and not to speak at fund-raising events.

The Judicial Ethics Committee has held that writing an introduction for a book was not using the judicial office for a private business.

C. CHARITABLE, CIVIC, AND GOVERNMENTAL ACTIVITIES.

(1) Except when acting *pro se* in a matter that involves the judge or the judge's interests, when acting as to a matter that concerns the administration of justice, the legal system, or improvement of the law, or when acting as otherwise allowed under Canon 4, a judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official.

COMMENT

As suggested in the *Reporter's Notes to the ABA Model Code of Judicial Conduct* (1990), the "administration of justice" is not limited to "matters of judicial administration" but is broad enough to include other matters relating to the judiciary.

**Alternative A - Rules Committee's Version**

(2) Except as otherwise provided by law and subject to Canon 4A, a judge may accept appointment to a governmental commission, committee, or position.

**Alternative B - Judicial Ethics Committee's Version**

(2) Except as otherwise provided by law and subject to Canon 4A, a judge may accept appointment to a governmental advisory commission, committee, or position.

COMMENT

A judge may not accept a governmental appointment that could interfere with the effectiveness and independence of the judiciary, assume or discharge an executive or legislative power (Maryland Declaration of Rights, Article 8), or hold an "office"

under the constitution or other laws of the United States or State of Maryland (Maryland Declaration of Rights, Articles 33 and 35).

Committee note: The Judicial Ethics Committee notes that the supremacy clause of U.S. Constitution Article IV may allow service in reserve components of the armed forces that otherwise might be precluded under this Code, such as service as a judge advocate or military judge. However, the Attorney General, rather than the Judicial Ethics Committee, traditionally has rendered opinions with regard to issues of dual or incompatible offices.

(3) A judge may represent this country, a state, or a locality on ceremonial occasions or in connection with cultural, educational, or historical activities.

(4) (a) Subject to other provisions of this Code, a judge may be a director, member, non-legal adviser, officer, or trustee of a charitable, civic, educational, fraternal or sororal, law-related, or religious organization.

#### COMMENT

See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code." As an example of the meaning of the phrase, a judge permitted under Canon 4C (4) to serve on the board of an organization may be prohibited from such service by, for example, Canon 2C or 4A, if the organization practices invidious discrimination or if service on the board otherwise causes a substantial question as to the judge's capacity to act **impartially** as a judge or as to service as a legal adviser.

(b) A judge shall not be a director, member, non-legal adviser, officer, or trustee of an organization that is conducted for the economic or political advantage of its members.

(c) A judge shall not be a director, member, non-legal

adviser, officer, or trustee of an organization if it is likely that the organization:

(i) will be engaged regularly in adversary proceedings in any court; or

(ii) deals with people who are referred to the organization by any court.

#### COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine whether it is proper to continue a relationship with it. For example, in many jurisdictions, charitable organizations are more frequently in court now than in the past or make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(d) (i) A judge shall not participate personally in:

(A) solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise appellate or supervisory jurisdiction; or

(B) a membership solicitation that reasonably might be perceived as coercive or, except as permitted in Canon 4C (4)(d)(i)(A), is essentially a fund-raising mechanism.

(ii) A judge shall not participate as a guest of honor or speaker at a fund-raising event.

(iii) Except as allowed by Canon 4C (4)(d), a judge shall not use or lend the prestige of judicial office for fund-

raising or membership solicitation.

(iv) A judge may:

(A) assist an organization in planning fund-raising;

(B) participate in the investment and management of an organization's funds; and

(C) make recommendations to private and public fund-granting organizations on programs and projects concerning the administration of justice, the legal system, or improvement of the law.

#### COMMENT

As a director, member, non-legal adviser, officer, or trustee of an organization that is devoted to the administration of justice, the legal system, or improvement of the law or for a not-for-profit charitable, civic, educational, fraternal or sororal, or religious organization, a judge may solicit membership and encourage or endorse membership efforts for the organization, as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor who is in a position of control or influence. A judge may be listed as a director, officer, or trustee of an organization but must not engage in direct, individual solicitation of funds or memberships in person, by telephone, or in writing, for that organization, except in the following cases: (1) a judge may solicit, for funds or memberships, other judges over whom the judge does not exercise appellate or supervisory authority; (2) a judge may solicit, for membership in an organization described above, other persons if neither those persons nor persons with whom they are affiliated are likely to appear before the court on which the judge serves; and (3) a judge who is an officer of an organization described above may send a general membership solicitation mailing over the judge's signature.

Use of an organization's letterhead for fund-raising or membership solicitation does not violate Canon 4C (4) if the

letterhead lists only the judge's name and office or other position in the organization. A judge's judicial office also may be listed if comparable information is listed for other individuals. A judge must make reasonable efforts to ensure that court officials, the judge's staff, and others subject to the judge's direction and control do not use or refer to their relationship with the judge to solicit funds for any purpose, charitable or otherwise.

Although a judge is not permitted to be a guest of honor or speaker at a fund-raising event, Canon 4 does not prohibit a judge from attending an event if otherwise consistent with this Code.

#### D. FINANCIAL ACTIVITIES.

(1) A judge shall not engage in business or financial dealings that:

- (a) reasonably would be perceived to violate Canon 2B; or
- (b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

#### COMMENT

Canon 4D (1)(b) is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for recusal. A judge also should discourage **members of the judge's family** from engaging in dealings that reasonably would appear to exploit the judge's judicial position. With respect to affiliation of relatives of the judge with law firms appearing before the judge, see the Comment to Canon 3D (1)(d) relating to recusal.

Participation by a judge in business and financial dealings is subject to the general prohibitions in Canon 4A against activities that cause a substantial question as to **impartiality**, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation also is subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against misuse of the prestige of

judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code."

(2) Subject to other provisions of this Code, a judge may hold and manage investments, including real estate, and engage in other remunerative activities except that a full-time judge shall not hold a directorship or office in a bank, insurance company, lending institution, public utility, savings and loan association, or other business, enterprise, or venture that is affected with a public interest.

(3) A judge shall manage investments and other financial interests to minimize the number of cases in which recusal would be required. As soon as practicable without serious financial detriment, a judge shall dispose of those financial interests that might require frequent recusal.

(4) A judge shall neither use nor disclose, in financial dealings or for any other purpose not related to the judge's judicial duties, information that is acquired in his or her judicial capacity and that is confidential, privileged, or otherwise not part of the public record.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records) and Code, Tax-General Article, §13-1018 (tax information).

(5) A judge shall not accept, and shall urge **members of the**

**judge's household** not to accept, a bequest, favor, **gift**, or loan from anyone except for:

(a) contributions to a judge's campaign for judicial office that comply with Canon 5;

(b) a book, tape, or other resource material supplied by a publisher on a complimentary basis for official use, a **gift** incident to a public testimonial, or an invitation to a judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the administration of justice, the legal system, or improvement of the law;

(c) an award, benefit, or **gift** incident to the business, profession, or other separate activity of a spouse or other **member of the judge's household**, including an award, benefit, or **gift** for the use of both the household member and judge (as spouse or household member), if the award, benefit, or **gift** could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(d) ordinary social hospitality;

(e) a **gift** from a friend or relative, for a special occasion, such as an anniversary, birthday, or wedding, if the **gift** is fairly commensurate with the occasion and the friendship or relationship;

(f) a bequest, favor, **gift**, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require a recusal under Canon 3D;

(g) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(h) a fellowship or scholarship awarded on the same terms and based on the same criteria applied to other applicants; or

(i) any other bequest, favor, **gift**, or loan if: (1) the donor or lender is not a person whose interests have come or are likely to come before the judge and (2) the judge reports, on the judge's financial disclosure form, all bequests, favors, **gifts**, and loans required under Rule 16-815 to be reported.

#### COMMENT

However innocently intended, favors or **gifts** from persons not in a judge's immediate family may create an appearance that the judge could be improperly beholden to the donor.

Similarly, a bequest, favor, **gift**, or loan to a **member of the judge's household** might be viewed as intended to influence the judge. Therefore, a judge must inform those household members of the relevant ethical constraints on the judge in this regard and discourage those household members from violating the constraints. However, a judge cannot reasonably be expected to **know** or control all of the business and financial activities of all **members of the judge's household**.

Canon 4D (5)(b) and (i) governs, respectively, acceptance of an invitation to a law-related function and of an invitation paid for by an individual lawyer or group of lawyers.

A judge may accept a public testimonial, or a **gift** incident thereto, only if the donor is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial or **gift** complies with other provisions of this Code. See Canons 2B and 4A (1).

A **gift** that is made to a judge, or a **member of the judge's household**, and is excessive in value raises questions about the judge's **impartiality** and the integrity of the judicial office and

might require recusal of the judge. See, however, Canon 4D (5)(f).

E. **FIDUCIARY** ACTIVITIES.

(1) (a) Except as provided in Canon 4E (1) and then only subject to other provisions of this Code and statutes, a judge shall not serve as a **fiduciary**.

(b) A judge may serve as a **fiduciary** for a **member of the judge's family**.

(c) A judge who has served as a trustee of a trust since December 31, 1969, may continue to do so as allowed by law.

(2) A judge shall not agree to serve as a **fiduciary** if it is likely that, as a **fiduciary**, the judge will be engaged in proceedings that ordinarily would come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or in a court under the appellate jurisdiction of the court on which the judge serves.

(3) The restrictions that apply to personal financial activities of a judge also apply to the judge's **fiduciary** financial activities.

COMMENT

The Time for Compliance provision of this Code (Canon 6D) postpones the time for compliance with certain provisions of Canon 4E in some cases.

Committee note: Code, Estates and Trusts Article, §§5-105 (b)(5) and 14-104 prohibit a judge from serving as a personal representative or trustee for someone who is not a spouse or within the **third degree of relationship** (although a judge serving

as trustee as of 12/31/69 is allowed to continue in that capacity). Neither the 1987 Maryland Code of Judicial Conduct nor any other Maryland law explicitly prohibits a judge from serving as any other type of **fiduciary** for anyone.

F. SERVICE AS ARBITRATOR OR MEDIATOR.

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

COMMENT

Canon 4F does not preclude a judge from participating in settlement conferences. If by reason of disclosure made during or as a result of a conference, a judge's **impartiality** might reasonably be questioned, the judge should not participate in the matter further. See Canon 3D (1).

G. PRACTICE OF LAW.

(1) Except as allowed by Canon 4G, a judge shall not practice law. Notwithstanding this prohibition, a judge may act *pro se* in a matter involving the judge or the judge's interest and, if without compensation, may give legal advice to and draft or review documents for a **member of the judge's family**.

(2) (a) To the extent expressly allowed by law and subject to other applicable provisions of this Code, a part-time judge of an orphans' court may practice law.

Cross reference: See Code, Estates and Trusts Article, §2-109 for restrictions on the practice of law by a part-time judge of an orphans' court.

(b) A judge of an orphans' court shall avoid conduct

whereby the judge uses or seems to use the judicial office to further success in the practice of law.

(c) A judge of an orphans' court shall not practice, or appear as an individual in a matter involving the judge or the judge's interest, in the court on which the judge serves, even when another judge is presiding.

#### COMMENT

Canon 4G (1) limits the practice of law in a representative capacity but not in a *pro se* capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office for any reason, including advancement of an interest of the judge or the judge's family. See Canons 2B and 4C (1).

This Code allows a judge to give legal advice to, and draft legal documents for, a **member of the judge's family**. However, except for a part-time orphans' court judge allowed to practice law, a judge must not receive any compensation from, or act as an advocate or negotiator for, a **member of the judge's family** in a legal matter.

#### H. COMPENSATION AND REIMBURSEMENT.

Unless otherwise prohibited by law, a judge may receive compensation and reimbursement of expenses for extra-judicial activities permitted by this Code if:

(1) the source of compensation or reimbursement does not give the appearance of impropriety;

(2) the compensation does not exceed a reasonable amount and does not exceed the amount a person who is not a judge ordinarily would receive for the same activity; and

(3) the expense reimbursement is limited to the actual cost of food, lodging, and travel reasonably incurred by a judge and, if appropriate to the occasion, by the judge's spouse or guest.

COMMENT

Acceptance of an "**honorarium**," as defined in Code, State Government Article, §15-102 (r), is governed by Code, State Government Article, §15-505. See Judicial Ethics Opinion No. 128 (issued February 2, 2000).

A judge must disclose financial matters such as debts or income, investments, or other assets, only to the extent required by Canon 4H, by Canon 3D or E, or by law. See Code, State Government Article, §15-610.

CANON 5

Political Activity

A. POLITICAL CONDUCT OF JUDGE WHO IS NOT CANDIDATE.

(1) A judge who is not a candidate for election or re-election to or retention in a judicial office shall not engage in any partisan political activity.

(2) (a) Except as otherwise provided in Canon 5A (2)(b), a judge shall resign when the judge becomes a candidate for a non-judicial office.

(b) A judge may continue to hold judicial office while a candidate for election to, or delegate in, a Maryland constitutional convention.

Committee note: Canon 5A (2) of the Model Code of Judicial Conduct adopted by the American Bar Association in 2000 allows a judge to serve as a state constitutional convention delegate if allowed by law. Such a delegate does not hold an "office," which Maryland Declaration of Rights, Article 33 would prohibit a judge from holding. See *Board v. Attorney General*, 246 Md. 417 (1967).

B. POLITICAL CONDUCT OF JUDGE WHO IS CANDIDATE.

(1) A judge who is a candidate for election or re-election to or retention in a judicial office may engage in partisan political activity allowed by law with respect to such candidacy, except that the judge:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the **impartiality**, independence, and integrity of the judiciary;

(b) shall not act as a leader or hold an office in a **political organization**;

(c) shall not make a speech for a candidate or **political organization** or publicly endorse a candidate for non-judicial office;

COMMENT

A judge does not publicly endorse a candidate for public office by having the judge's name on the same ticket.

(d) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office;

COMMENT

Canon 5B (1)(d) does not prohibit a candidate from making a commitment, pledge, or promise respecting improvements in court administration or the faithful and **impartial** performance of the duties of the office.

(e) shall not **knowingly** misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact; and

(f) shall not allow any other person to do for the judge what the judge is prohibited from doing.

(2) A candidate for a judicial office may respond to a personal attack or an attack on the candidate's record as long as the response does not violate Canon 5B (1).

Committee note: Canon 5A (1)(b) of the Model Code of Judicial Conduct adopted by the American Bar Association in 2000 ("ABA Code (2000)") probably is broad enough even to prohibit a judge from endorsing another judge who is also a candidate, public endorsement by one judicial candidate of another judicial candidate has long been permitted in Maryland. See Maryland Judicial Ethics Opinion No. 20 (issued 4/25/74).

ABA Code (2000), Canon 5A (1)(d), which bars attendance of a judge-candidate at political gatherings, is omitted as not consistent with Maryland Judicial Ethics Opinion No. 63 (issued 5/8/78), which recognized that "any potential opponents ... would clearly take advantage of this type of exposure [and] ... it is neither desirable nor necessary that you, as a candidate for election, be denied similar opportunity."

ABA Code (2000), Canon 5A (1)(e) and C (2) prohibits a judge from personally soliciting or accepting campaign funds or personally soliciting publicly stated support; however, a judge may establish "committees of responsible persons" to do these things for the judge. The Judicial Ethics and the Rules Committee believe that this prohibition may be too restrictive, since it puts a judge at a political disadvantage to active opposition. Maryland law does require all campaign funds to be publicly reported by the campaign treasurer.

The Judicial Ethics and the Rules Committee disagree with the proposition in ABA Code (2000), Canon 5A (3)(a), which states that family members of a judge should adhere to the same standards of political conduct as a judge who is a candidate for judicial office. The Committees believe that family members should be free to engage, in their own right, in political activity that is not related to the judge's office.

ABA Code (2000), Canon 5A (3)(b) requires that a judge prohibit public officials and employees subject to the judge's direction and control from doing for the judge what the judge is prohibited from doing. The Committees believe that this is redundant and may even imply that a judge must terminate the employment of an individual who does not follow the judge's admonitions - a result that may be unreasonable under the circumstances.

### C. STATUS OF JUDGE OR LAWYER AS CANDIDATE.

"Candidate" applies to an individual seeking to be elected to or to retain a judicial office:

(1) as to a newly appointed judge, from the date of taking the oath of office until the general election pertaining to that judge's election or initial retention;

(2) as to any other incumbent judge, from the earlier of:

(a) the date two years prior to the general election pertaining to that judge's re-election or subsequent retention;

or

(b) the date on which a newly appointed judge to that court becomes a "candidate" in the same general election;

(3) as to a judge who is seeking election to another judicial office, the earlier of:

(a) the date on which the judge files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office; or

(b) the date on which a newly appointed judge to that court becomes a "candidate" in the same general election; and

(4) as to a lawyer who is seeking a judicial office, the date on which the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for the office.

Committee note: Maryland Judicial Ethics Opinion No. 14 (issued 5/23/74) allows a judge to begin campaigning as a candidate immediately upon assumption of office. The longest possible campaign period would be one day less than three years. See Maryland Constitution, Article IV, §5. Maryland Judicial Ethics Opinion No. 34 (issued 7/7/75), which had allowed an incumbent judge to campaign for re-election only from January 1 of the year of the election, was found to be too restrictive, so Maryland

Judicial Ethics Opinion No. 57 (issued 11/28/77) changed the period to "times which are reasonable under the particular circumstances of each case." The Judicial Ethics Committee believed that the latter standard was too vague, and the Court of Appeals permitted an incumbent judge to campaign as soon as the preceding general election ended, which is a two-year period, or earlier if a newly appointed judge, who will be a running mate of the incumbent judge, already has become a candidate.

A judge should be permitted to engage in political activity regarding the judge's candidacy for judicial office only if the judge's intention to pursue that candidacy is clear. An incumbent judge's candidacy for election or re-election is fairly obvious, but a judge's intention to seek another judicial office is not as clear; therefore, the filing of a certificate of candidacy is required in the latter situation.

#### D. APPLICABILITY; DISCIPLINE.

A candidate who is a judge shall comply with Canon 5. A candidate who is a lawyer shall comply with Rule 8.2 of the Maryland Rules of Professional Conduct. A successful candidate and a judge who unsuccessfully sought a different judicial office are subject to judicial discipline for campaign conduct. An unsuccessful candidate who is a lawyer is subject to attorney discipline for campaign conduct.

Cross reference: See Rules 16-802 through 16-810 concerning judicial discipline and Rules 16-701 through 16-781 concerning attorney discipline.

CANON 6

Compliance

A. This Code applies to each judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court.

B. Violation of any of the Canons by a judge may be regarded as conduct prejudicial to the proper administration of justice within the meaning of Maryland Rule 16-803 (j), as to the Commission on Judicial Disabilities.

Committee note: Whether a violation is or is not prejudicial conduct is to be determined by the Court of Appeals of Maryland. Maryland Constitution, Article IV, §4B gives that Court the authority to discipline any judge upon recommendation of the Commission on Judicial Disabilities. This disciplinary power is alternative to and cumulative with the impeachment authority of the General Assembly.

C. This Code, other than Canon 4C (Charitable, Civic, and Governmental Activities), D(2) (Financial Activities), E (**Fiduciary** Activities), and F (Service as Arbitrator or Mediator), applies to each judge of one of those courts who is approved for recall for temporary service under Maryland Constitution, Article IV, §3A.

D. An individual to whom this Code becomes applicable shall comply immediately with all provisions of this Code except: Canon

2C (Avoidance of Impropriety and the Appearance of Impropriety), Canon 4D (2) (Financial Activities), and Canon 4E (**Fiduciary** Activities). The individual shall comply with Canons 2C and 4D (2) and E as soon as reasonably possible, and shall do so in any event as to Canon 2C within two years and as to Canon 4D (2) and E within one year.

Source: This Rule is derived in part from former Rule 1231, Maryland Code of Judicial Conduct, adopted by Rules Order dated November 21, 1986, effective July 1, 1987, as amended from time to time (renumbered Rule 16-813 by Rules Order dated January 18, 1996, effective July 1, 1996 and hereinafter referred to as "Maryland Code (1987)") and is in part new, patterned for the most part on the Model Code of Judicial Conduct adopted by the American Bar Association in 2000 (hereinafter referred to as "ABA Code (2000)"), with amendments in August 2003 (hereinafter referred to as "ABA Code (2000, amended 2003)"), as follows:

### **Preamble**

The Preamble is derived from the Preamble to ABA Code (2000), with the addition of the last paragraph.

### **Terminology**

The definition of "fiduciary" is derived from a similar definition in the ABA Code (2000) Terminology section, with the addition of the references to an "attorney-in-fact" and "personal representative." In light of the addition of this definition, the definition of "fiduciary" in Maryland Code (1987), Canon 3C (3)(b) for the limited purpose of that Canon is omitted.

The definition of "gift" is added to reference Code, State Government Article, §15-102 (p), which, for purposes of provisions of the Maryland Public Ethics Law applicable to *inter alia* judges as of the date this Rule was proposed, defined "gift" to mean the transfer of anything of economic value, regardless of form, without adequate and lawful consideration, but not to include the solicitation, acceptance, receipt, or regulation of a political contribution that is regulated in accordance with Code, Election Law Article or any other State law regulating the conduct of elections or the receipt of political contributions.

The definition of "honorarium" is added to reference Code, State Government Article, §15-102 (r), which, for purposes of provisions of the Maryland Public Ethics Law applicable to *inter alia* judges as of the date this Rule was proposed, defined "honorarium" to mean the payment of money or anything of value for speaking to, participating in, or attending a meeting or other function or for writing an article that has been or is intended to be published but not to include payment for writing a book that has been or is intended to be published.

The definition of "impartial, impartiality, or impartially" is derived from a similar definition in the ABA Code (2000, amended 2003) Terminology section, with the addition of "impartially."

**If "Alternative A" is used:**

The definition of "knowingly, knowledge, know, or knows" is derived from a substantially similar definition in the ABA Code (2000) Terminology section.

**If "Alternative B" is used:**

The definition of "know" is derived from a substantially similar definition in the ABA Code (2000) Terminology section but restated as an infinitive, for simplicity and consistency with the definition of "require."

The definition of "member of the judge's family" is derived from a substantially similar definition in the ABA Code (2000) Terminology section.

The definition of "member of the judge's household" is substituted for the definition of "member of the judge's family residing in the judge's household" in the ABA Code (2000) Terminology section, to incorporate Code, State Government Article, §15-102 (z), which, for purposes of provisions of the Maryland Public Ethics Law applicable to *inter alia* judges as of the date this Rule was proposed, defined "member of household" to mean "(1) if sharing an individual's legal residence, the individual's: (i) spouse; (ii) child; (iii) ward; (iv) financially dependent parent; or (v) other financially dependent relative; or (2) an individual's spouse, child, ward, parent, or other relative, over whose financial affairs the individual has legal or actual control."

The definition of "political organization" is derived from a substantially similar definition in the ABA Code (2000)

Terminology section.

The definition of "require" is derived from a substantially similar definition in the ABA Code (2000) Terminology section. The infinitive is used to avoid an unnecessary and potentially incomplete listing of various forms of "require."

**If "Alternative A" is used:**

The definition of "significant financial interest" is derived from the definition of "financial interest" set forth in Code, State Government Article (1984, 1995 Replacement Volume and 1998 Supplement), §15-102 (n) and the exceptions in the definition of "economic interest" in the ABA Code (2000) Terminology Section. In light of this definition, the definition of "financial interest" in Maryland Code (1987), Canon 3C (3)(c) for the limited purpose of that Canon and the term "de minimis" in the ABA Code (2000) Terminology Section are omitted. References to a proceeding being "imminent" are substituted for the ABA Code (2000) references to "impending" proceedings.

**If "Alternative B" is used:**

The definition of "significant financial interest" incorporates Code, State Government Article, §15-102 (n), which, for purposes of provisions of the Maryland Public Ethics Law applicable to *inter alia* judges as of the date of this Rule was proposed, defined "financial interest." This definition reflects usage of "significant financial interest" in Maryland Code (1987). This definition also includes the exceptions in the definition of "economic interest" in the ABA Code (2000) Terminology Section. In light of this definition, the definition of "financial interest" in Maryland Code (1987), Canon 3C (3)(c) for the limited purpose of that Canon and the term "de minimis" in the ABA Code (2000) Terminology Section are omitted.

The definition of "third degree of relationship" is derived from a substantially similar definition in the ABA Code (2000) Terminology section. In light of the addition of this definition, the requirement in Maryland Code (1987), Canon 3C (3)(a) for calculation of relationships according to the civil law system but only for the limited purpose of that Canon is omitted.

The ABA Code (2000) definitions of "aggregate," "appropriate authority," "candidate," "continuing part-time judge," "court personnel," "law," "member of the candidate's family," "nonpublic

information," "periodic part-time judge," "pro tempore part-time judge," and "public election" are omitted as inapplicable to Maryland or otherwise unnecessary.

### **Canon 1**

Canon 1 is derived from Maryland Code (1987), Canon 1, except that the language has been reworded to be mandatory rather than hortatory in accordance with ABA Code (2000), Canon 1.

Canon 1 is consistent with Maryland Declaration of Rights, Article 33, which states, in part, that "the independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People."

ABA Code (2000), Canon 1 states that a judge should "participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved." Although desirable, a judge should not be obligated to participate in "establishing" standards of conduct.

The Comment is new and is substantially the same as the Commentary to ABA Code (2000, amended 2003), Canon 1.

### **Canon 2**

Canon 2A is derived from the first sentence of Maryland Code (1987), Canon 2A, except that the language has been reworded to be mandatory rather than hortatory in accordance with ABA Code (2000, amended 2003), Canon 2A.

The second sentence of Maryland Code (1987), Canon 2A, which suggested application of the Canon to both personal and professional life, now is covered in the Comment to Canon 2A.

The Comment to Canon 2A is based on the first paragraph of the Comment to Maryland Code (1987), Canon 2B and, with the omission of the second sentence as to avoiding impropriety and appearance of impropriety, on the Commentary to ABA Code (2000, amended 2003), Canon 2A.

Canon 2B is derived from Maryland Code (1987), Canon 2B, except that the language has been reworded to be mandatory rather than hortatory and references to political relationships, to lending prestige, and to the judge's benefit are added in accordance with ABA Code (2000), Canon 2B. Additionally, references to an appearance of improper influence and to employment offers, are added.

The Comment to Canon 2B is based on the Commentary to ABA Code (2000), Canon 2B, with the addition of the reference to a "personal" communication and omission of the third sentence of the second paragraph, as to retaining control over advertisement of publications, which was considered impracticable; the second sentence of the fourth paragraph, as to Canon 5 with respect to use of a judge's name in political activities, and the reference, in that paragraph, as to responses to official inquiries about judicial candidates; and the second and fourth sentences of the fifth paragraph, as to the effect of testifying on lawyers and the need to discourage requests for such testimony.

Canon 2C is derived from Maryland Code (1987), Canon 2C and the comparable ABA Code (2000), Canon 2C.

The Comment to Canon 2C is derived from the Comment to Maryland Code (1987) and Commentary to ABA Code (2000), Canon 2C, with the addition of the third and fourth sentences, derived from part of the Maryland Code (1987) Committee Note to Canon 2C. Additionally, the citations to various cases are omitted.

### **Canon 3**

Canon 3A is derived from Maryland Code (1987), Canon 3A (9) and the comparable ABA Code (2000), Canon 3B (5), except as to persons under the direction and control of a judge, and from the references in Maryland Code (1987), Canon 3B (1), the comparable ABA Code (2000), Canon 3C (1), the Comment to Maryland Code (1987), Canon 3A (9), and the Commentary to ABA Code (2000), Canon 3B (5), as to diligence, impartiality, and absence of bias and prejudice. Duties set forth previously as pertaining to adjudicative or administrative functions that in fact pertain to all judicial functions are set forth in Canon 3A.

The requirement in ABA Code (2000), Canon 3A that judicial duties take precedence "over all ... other activities" and the description of "judicial duties" as those prescribed by "law" are omitted.

The Comment to Canon 3A is derived from, except as they relate to persons under control of a judge, the Comment to Maryland Code (1987), Canon 3A (9) and Commentary to ABA Code (2000), Canon 3B (5), except that the first paragraph has been restated as the fifth sentence and the listing of those who could perceive judicial bias is omitted.

Canon 3B (1) and (2) is derived from Maryland Code (1987), Canon 3A (1) and (2), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA

Code (2000), Canon 3B (2).

Canon 3B (3) is derived from Maryland Code (1987), Canon 3A (3), except that the language has been reworded to be mandatory rather than hortatory and the newly defined term "require" is substituted for "maintain," in accordance with ABA Code (2000), Canon 3B (3).

Canon 3B (4) and (5) is derived from Maryland Code (1987), Canon 3A (4), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000), Canon 3B (4). The Comment to Canon 3B (5) is derived from the Commentary to ABA Code (2000), Canon 3B (4).

Canon 3B (6)(a) and (b) is derived from the first sentence of Maryland Code (1987), Canon 3A (5), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000), Canon 3B (7). Additionally, the limitations "pending before the judge" and "[w]hile presiding over a proceeding" are added. Canon 3B (6)(c), (d), (f), and (g) is derived from the exceptions in ABA Code (2000), Canon 3B (7)(a), (d), (c), and (e) and the second sentence of the Comment to Maryland Code (1987), Canon 3A (5) as to consultation with other judges and staff. Canon 3B (6)(e) is derived from the second sentence of Maryland Code (1987), Canon 3A (5) and the comparable ABA Code (2000), Canon 3B (7)(b), with the addition of "reasonable." The first and fourth paragraphs of the Comment to Canon 3B (6) are derived from the first and third sentences of the Comment to Maryland Code (1987), Canon 3A (5) and the comparable first and fourth paragraphs of the Commentary to ABA Code (2000), Canon 3B (7). The second, third, and fifth through ninth paragraphs of the Comment to Canon 3B (6) are derived from the second, third, and fifth through ninth paragraphs of the Commentary to ABA Code (2000), Canon 3B (7), with the addition, in the sixth paragraph, of a reference to "matters of which the court properly can take judicial notice."

Canon 3B (7) is derived from Maryland Code (1987), Canon 3A (6), except that the language has been reworded to be mandatory rather than hortatory and the words "efficiently" and "fairly" are added, in accordance with ABA Code (2000), Canon 3B (8). The Comment to Canon 3B (7) is derived from the Comment to Maryland Code (1987), Canon 3A (6) and the comparable second paragraph of the Commentary to ABA Code (2000), Canon 3B (8). The first paragraph of the Commentary to ABA Code (2000), Canon 3B (8), as to supervision of cases to ensure rights to be heard without unnecessary cost or delay and facilitation of settlement, is omitted.

Canon 3B (8) is derived from Maryland Code (1987), Canon 3A (7), except that the language has been reworded to be mandatory rather than hortatory and reference to an expectation of affecting an outcome of fairness is added, in accordance with the first and second sentences of ABA Code (2000), Canon 3B (9). The fourth sentence of ABA Code (2000), Canon 3B (9), which excludes a judge acting *pro se*, is omitted. The Comment to Canon 3B (8) is derived from the Comment to Maryland Code (1987), Canon 3A (7) and the third sentence of the Commentary to ABA Code (2000), Canon 3B (9).

Canon 3B (9) and the Comment to Canon 3B (9) are derived from ABA Code (2000, amended 2003), Canon 3B (10) and the Commentary to ABA Code (2000, amended 2003), Canon 3B (10).

Canon 3B (10) is derived from Maryland Code (1987), Canon 3A (8), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000, amended 2003), Canon 3B (11), and has been broadened to cover communication in addition to oral communication, in accordance with the Comment to Canon 3A. The Comment to Canon 3B (10) is derived from the Commentary to ABA Code (2000, amended 2003), Canon 3B (11).

Canon 3B (11) is derived from Maryland Code (1987), Canon 3A (10) and the comparable ABA Code (2000), Canon 3B (6).

Canon 3B (12) is derived from ABA Code (2000), Canon 3B (1).

Canon 3C (1) is derived from the provisions as to cooperation in Maryland Code (1987), Canon 3B (1) and the proscription against favoritism and nepotism in the first sentence of Maryland Code (1987), Canon 3B (4), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000), Canon 3C (1) and (4). The provisions in Maryland Code (1987), Canon 3B (1) and ABA Code (2000), Canon 3C (1) as to maintaining "professional competence in judicial administration" are omitted. The Comment to Maryland Code (1987), Canon 3B (1), which described the revision of the 1987 provisions as to bias and prejudice and cooperation, also is omitted.

Canon 3C (2) is derived from Maryland Code (1987), Canon 3B (2) and the comparable ABA Code (2000), Canon 3C (2). The Comment to Maryland Code (1987), Canon 3B (2), which described the revision of the 1987 provision, is omitted.

Canon 3C (3) is derived from ABA Code (2000), Canon 3C (3).

Canon 3C (4) is derived from the second and third sentences of Maryland Code (1987), Canon 3B (4), except that the language has been reworded to be mandatory rather than hortatory, in accordance with the first and fourth sentences of ABA Code (2000), Canon 3C (4). The provision of the first sentence of Maryland Code (1987), Canon 3B (4) as to appointing qualified persons is omitted. The Comment to Canon 3C (4) is derived from the Comment to Maryland Code (1987), Canon 3B (4) and the second sentence of the Commentary to ABA Code (2000), Canon 3C (4). The first sentence of the ABA Commentary, which listed examples of appointees, is omitted.

ABA Code (2000), Canon 3C (5), which would bar appointment of election contributors, is omitted.

Canon 3D is derived from Maryland Code (1987), Canon 3C, except that the language has been reworded to be mandatory rather than hortatory, reference to bias or prejudice against "a party's lawyer" is added in Canon 3D (1)(a), reference to a former law partner as a material witness is omitted from Canon 3D (1)(b), the requirement that the judge know of a relative's position as director, officer, or trustee is omitted in Canon 3D (1)(c), and Canon 3D (1)(e) is added, all in accordance with ABA Code (2000, amended 2003), Canon 3E (1)(a) through (e) and (2). Additionally, "recuse" is substituted for "not participate" and "disqualify." Also, in Canon 3D (1)(a), "extra-judicial" is substituted for "personal." In Canon 3D (1)(c) and (2), the newly defined terms "member of the judge's family" and "member of the judge's household" are substituted for the narrower references in Maryland Code (1987), Canon 3C (1)(c) and (2) to a "spouse" and "minor" children "residing in the judge's household" and in ABA Code (2000, amended 2003), Canon 3E (1)(c) and (2) to a "spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household" and "spouse and minor children residing in the judge's household" to conform to the Maryland Public Ethics Law applicable to *inter alia* judges. ABA Code (2000), Canon 3E (1)(e), which provides for recusal in cases involving campaign contributors, is omitted.

The Comment to Canon 3D (1)(b) is derived from the Comment to Maryland Code (1987), Canon 3C (1)(b). The Comment to Canon 3D (1)(c) is derived from the second paragraph of the Comment to Maryland Code (1987), Canon 3C (1)(c). The first paragraph, which set forth a statutory definition of "significant financial interest," is omitted as unnecessary in light of the Terminology section. ABA Code (2000), Canon 3D (1)(c) requires recusal if any but a *de minimis* economic interest is present. Use of "significant financial interest" reflects the decision of the Court of Appeals, in the 1987 revision, that *de minimis* financial interests should not require recusal automatically. **[If the**

**definition of "significant financial interest" in the Terminology section is "Alternative B," add the following sentence: As a result, the definition of "financial interest" provided in the Maryland Public Ethics Law, Code, State Government Article, §15-102 (n), as amended from time to time, is used, rather than the 1987 definition.]**

The Comment to Canon 3D (1)(d)(ii) is derived from the Comment to Maryland Code (1987), Canon 3C (1)(d)(ii).

The Comment to Canon 3D (2) is derived from the Commentary to the introductory language of ABA Code (2000, amended 2003), Canon 3E (1), except the second sentence as to employment negotiation, which now is covered by Canon 2B.

Canon 3E is derived from Maryland Code (1987), Canon 3D, with the substitution of "out of the presence of the judge" for "independently of the judge's participation" and the addition of a requirement that an agreement be on the record to conform to ABA Code (2000), Canon 3F. The Comment to Canon 3E is substituted for the Comment to Maryland Code (1987), Canon 3D, which allowed agreement by a *pro se* party for a judge's participation, to ensure an independent decision while allowing a judge to remind parties that a non-recusal agreement is permissible.

Canon 3F (1) is derived from Maryland Code (1987), Canon 3B (3), with the omission of the phrase "of which the judge may be aware." Canon 3F (2) and (3) is derived from the second sentences of ABA Code (2000), Canon 3D (1) and (2), with the addition of the qualifier "[i]f other corrective measures are not appropriate or, if attempted, were not successful." The first sentences of ABA Code (2000), Canon 3D (1) and (2), which exhort a judge to take appropriate action based on a "likelihood" of a violation, are omitted. Canon 3F (4) is derived from ABA Code (2000), Canon 3D (3). The first sentence of the Comment to Canon 3F is added, while the second sentence is derived from the Commentary to ABA Code (2000), Canon 3D (3). The third sentence is derived from the Comment to Maryland Code (1987), Canon 3B(3).

#### **Canon 4**

Canon 4A is derived from the introductory language of Maryland Code (1987), Canon 4, but reworded to state a duty in the manner of conducting an extra-judicial activity, in accordance with ABA Code (2000), Canon 4A. In Canon 4A (1), reference to "caus[ing] a substantial question" is substituted for "cast reasonable doubt." The first paragraph of the Comment to Canon 4A is derived from the Comment to Maryland Code (1987),

Canon 4A and the comparable paragraph in the Commentary to ABA Code (2000), Canon 4A. The first sentence of the second paragraph of the Comment to Canon 4A is added to highlight the purpose of the examples in the second through fourth sentences, which are derived from the second paragraph of the Commentary to ABA Code (2000), Canon 4A.

Canon 4B is derived from the first two sentences of Maryland Code (1987), Canon 4A, with addition of the qualifier "[s]ubject to other provisions of this Code," in accordance with ABA Code (2000), Canon 4B. Also, "improvement of" is added to modify "the law," to conform to the Comment to Canon 4B. The second sentence of Maryland Code (1987), Canon 4A, which expressly allowed recreational and social activities, is omitted. The Comment to Canon 4B is derived from the second paragraph of the Comment to Maryland Code (1987), Canon 4C (1) and the first, second, and fourth sentences of the Commentary to ABA Code (2000), Canon 4B. The third sentence of the ABA Commentary, which enables judges to participate in promoting fair administration of justice, judicial independence, and the integrity of the legal profession and to oppose persecution in other countries, is omitted.

Canon 4C (1) is derived from Maryland Code (1987), Canon 4B (1), but, in accordance with ABA Code (2000), Canon 4C (1), is reworded to bar appearance except in specified instances such as the *pro se* exception in Maryland Code (1987), Canon 4B (3), which, accordingly, is omitted. Also, "improvement of" is added to modify "the law," to conform to the Comment to Canon 4B. The Comment to Canon 4C (1) is derived from the Comment to Maryland Code (1987), Canon 4B (1) and renders unnecessary the Maryland Code (1987), Canon 4B (1) reference to matters concerning "the judiciary." The Commentary to ABA Code (2000), Canon 4B (1), cross-referencing Canon 2B, is omitted.

Canon 4C (2) is derived from the provision of Maryland Code (1987), Canon 4B (2) as to serving on a governmental advisory body and the similar, first sentence of ABA Code (2000), Canon 4B (2), but is restated to allow acceptance of an appointment to **[ALTERNATIVE A - A; ALTERNATIVE B - AN ADVISORY]** governmental commission, committee, or position in addition to those devoted to the administration of justice, the legal system, or improvement of the law. The Comment to Canon 4C (2) is derived from the third and fourth sentences of the Comment to Maryland Code (1987), Canon 4B (2) and the third sentence of the Commentary to ABA Code (2000), Canon 4C (2). The second and third sentences of the Maryland Code (1987) Comment and the comparable sentences in the Commentary to ABA Code (2000), Canon 4C (2), which referenced the valuable service rendered in the past and the demands of today's dockets and controversies, are

omitted. The second paragraph of the ABA Commentary, which disclaimed effect on nongovernmental service, also is omitted.

Canon 4C (3) is derived from the provision of Maryland Code (1987), Canon 4B (2) as to ceremonial occasions and the comparable second sentence of ABA Code (2000), Canon 4C (2).

Canon 4C (4)(a) and (b) is derived from the introductory language of Maryland Code (1987), Canon 4C and the comparable ABA Code (2000), Canon 4C (3), except as it related to governmental service. The Comment to Canon 4C (4)(a) is derived from the second paragraph of the Commentary to ABA Code (2000), Canon 4C (3). The first and third paragraphs of the Commentary to ABA Code (2000), Canon 4C (3), as to governmental service and other potentially applicable Code provisions, are omitted. Canon 4C (4)(c) is derived from Maryland Code (1987), Canon 4C (1)(b) and (c) and the comparable ABA Code (2000), Canon 4C (3)(a), with the omission of the language "will be engaged in proceedings that would ordinarily come before" the judge and the substitution of the reference to "any court" for limited references to courts on which the judge serves or has appellate jurisdiction, to broaden the limitation on the judge's service to such organizations. The Comment to Canon 4C (4)(c) is derived from the first paragraph of the Comment to Maryland Code (1987), Canon 4C (1) and the comparable Commentary to ABA Code (2000), Canon 4C (3)(a).

Canon 4C (4)(d)(i)(A) is derived from the first clause of the first sentence of Maryland Code (1987), Canon 4C (2), except as to use of prestige, with the addition of the exception for solicitation from certain other judges, in accordance with ABA Code (2000), Canon 4C (3)(b)(i). The second clause of the first sentence of Maryland Code (1987), Canon 4C (2), as to listing on letterhead, is omitted from the Canon but discussion of such usage is added to the Comment to Canon 4C (4)(d). Canon 4C (4)(d)(i)(B) is derived from ABA Code (2000), Canon 4C (3)(B)(iii). Canon 4C (4)(d)(ii) is derived from the third sentence of Maryland Code (1987), Canon 4C (2), except as to attendance. Canon 4C (4)(d)(iii) is derived from the first sentence of Maryland Code (1987), Canon 4C (2), as it related to use of prestige, with the addition of the reference to "membership solicitation," in accordance with ABA Code (2000), Canon 4C (3)(b)(iv). Canon 4C (4)(d)(iv) (A) and (B) is derived from ABA Code (2000), Canon 4C (3)(b)(i), except as to personal solicitation. Canon 4C (4)(d)(iv)(C) is derived from the second sentence of Maryland Code (1987), Canon 4C (2) and the comparable ABA Code (2000), Canon 4C (3)(b)(ii). The words "improvement of" are added to modify "the law," to conform to the Comment to Canon 4B. The Comment to Canon 4C (4)(d) is derived from the Commentary to ABA Code (2000), Canon 4C (3)(b), with the addition

of the provision as to listing as a director, officer, or trustee.

Canon 4D (1) is derived from Maryland Code (1987), Canon 4D (1), but the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000), Canon 4D (1). Reference to "Canon 2B" is substituted for the references to "us[ing] the judge's position" and being "reasonably ... perceived to exploit the judge's judicial position." The Comment to Canon 4D (1) is derived from the third and fourth paragraphs of the Commentary to ABA Code (2000), Canon 4D (1). The first two paragraphs of the ABA Commentary, as to time for compliance and use of confidential information, are omitted.

Canon 4D (2) is derived from Maryland Code (1987), Canon 4D (2), with the addition of the phrase "subject to other provisions of this Code," in accordance with the similar ABA Code (2000), Canon 4D (2). The ABA Code provision, however, includes investment holdings of a member of the judge's family, which is not included in Canon 4D (2). Accordingly, the Commentary to ABA Code (2000), Canon 4D (2) is omitted. Additionally, the ABA Code provision does not contain the exemptions contained in the 1987 Maryland provision and carried forward in Canon 4D (2). ABA Code (2000), Canon 4D (3) and the Commentary, as to business entities other than certain family-owned businesses, is omitted. Canon 4D (3) and (4) is derived from Maryland Code (1987), Canon 4D (3) and (4), but the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000, amended 2003), Canons 4D (4) and 3B (12), with addition of the qualifier "confidential, privileged, or otherwise not part of the public record." The cross references to rules and statutory provisions governing access to court records and confidentiality are added.

The introductory language of Canon 4D (5) is derived from the third sentence of Maryland Code (1987), Canon 4F (1), but reworded to bar acceptance absent an exception, in accordance with the introductory language of ABA Code (2000), Canon 4D (5). Canon 4D (5)(a) is derived from the first sentence of the Comment to Maryland Code (1987), Canon 4F (2) and Commentary to ABA Code (2000), Canon 4D (5). Canon 4D (5)(b) is derived from Maryland Code (1987), Canon 4F (1)(a), reworded to bar acceptance, with the addition of references to a "tape or other resource material" and "an invitation to ... a bar-related function or an activity devoted to ... improvement of the law," in accordance with ABA Code (2000), Canon 4D (5)(a). Therefore, the second paragraph of the Comment to Maryland Code (1987), Canon 4F (2), as to invitations, is omitted. Canon 4D (5)(c) and (i) is derived from ABA Code (2000), Canon 4D (5)(b) and (h). Canon 4D (5)(d) through (h) is derived from Maryland Code (1987), Canon 4F (1)(b) through (d), (f), and (e), respectively, and the comparable ABA

Code (2000), Canon 4D (5)(c) through (g). In Canon 4D (5)(f), "bequest" has been added in accordance with ABA Code (2000), Canon 4D (5)(e), but the word "recusal" has been retained from the 1987 Maryland Code, instead of "disqualification." In Canon 4D (5)(h), reference to "the same criteria applied to other applicants" is added, in accordance with ABA Code (2000), Canon 4D (5)(g). Maryland Code (1987), Canon 4F (2), which ascribes favors, gifts, and loans to a household member to the judge, is omitted.

The first paragraph of the Comment to Canon 4D (5) is derived from the first two sentences of Maryland Code (1987), Canon 4F (1). The second paragraph of the Comment to Canon 4D (5) is derived from the second paragraph of the Commentary to the introductory language of ABA Code (2000), Canon 4D (5), with substitution of "household member" for "family member" to correspond with use of the newly defined term "member of the judge's household" and deletion of "family" where it modified the defined term. The third and fourth paragraphs of the Comment to Canon 4D (5) are derived from the Commentary to ABA Code (2000), Canon 4D (5)(a). The fifth paragraph of the Comment to Canon 4D (5) is derived from the Commentary to ABA Code (2000), Canon 4D (5)(d), but the word "recusal" is substituted for "disqualification."

Canon 4E (1) and (3) is derived from the first through third and fifth sentences of Maryland Code (1987), Canon 4G, but the language has been reworded to be mandatory rather than hortatory, and the newly defined terms "fiduciary" and "member of the judge's family" are substituted for the references to "personal representative (executor or administrator) or special administrator of the estate of a descendant, ... trustee of a trust, ... custodian, ... guardian, or ... attorney in fact" and "spouse, ... surviving spouse or ... related within the third degree (according to the civil law system)," in accordance with ABA Code (2000), Canon 4E (1) and (3). Accordingly, the fourth sentence of Maryland Code (1987), which allowed a judge, in "extraordinary cases," to serve as attorney-in-fact or guardian for a "person with whom the judge maintains a close familial relationship," is omitted. Canon 4E (2) is derived from ABA Code (2000), Canon 4E (2). The Comment to Canon 4E is derived from the first paragraph of the Commentary to ABA Code (2000), Canon 4E. The Comment to Maryland Code (1987), Canon 4E and the comparable second paragraph of the ABA Commentary, as to potential conflicts, are omitted.

Canon 4F is derived from Maryland Code (1987), Canon 4H, with the addition of the reference to unauthorized performance of "judicial functions in a private capacity," in accordance with ABA Code (2000), Canon 4F. The Comment to Canon 4F is derived

from the Comment to Maryland Code (1987), Canon 4F and the first sentence of the Commentary to ABA Code (2000), Canon 4F.

The first sentence of Canon 4G (1) is derived from Maryland Code (1987), Canon 4I (1)(a) and the first sentence of ABA Code (2000), Canon 4G. The second sentence of Canon 4G (1) is derived from the second sentence of ABA Code (2000), Canon 4G. Canon 4G (2) is derived from Maryland Code (1987), Canon 4I (1)(b). Maryland Code (1987), Canon 4I (2) through (4), which provided for review of the duration of an agreement in connection with a prior law practice, is omitted as too narrow. The Comment to Canon 4G is derived from the Commentary to ABA Code (2000), Canon 4G, with the addition of the reference to an orphans' court judge.

Canon 4H is derived from the first sentence of Maryland Code (1987), Canon 4E, with the addition of "extra-judicial," the limitation on the source of compensation, and the reference to a judge's "guest," in accordance with ABA Code (2000), Canon 4H, and with addition of the cautionary "[u]nless otherwise prohibited by law." The Comment to Canon 4H is substituted for the Commentary to ABA Code (2000), Canon 4H. Code, State Government Article, §15-102 (r) governs acceptance of an "honorarium" in Maryland, as delineated in the referenced Judicial Ethics Opinion No. 128 (issued February 2, 2000), "Limitations on Honoraria." The second paragraph of the Comment is similar to ABA Code (2000), Canon 4H (2) and I. The sentences of Maryland Code (1987), Canon 4E and ABA Code (2000), Canon 4H declaring all else to be compensation are omitted.

## **Canon 5**

Canon 5A, B (1)(a) through (c) and (f), and C is derived from Maryland Code (1987), Canon 5, but the language is reworded as mandatory, rather than hortatory, reference to acting "in a manner consistent with the impartiality, independence, and integrity of the judiciary" is added, and Canon 5B (1)(d) is substituted for the 1987 Maryland provision limiting speech to a pledge of "faithful and impartial performance of duties," in accordance with ABA Code (2000, amended 2003), Canon 5A (1)(a) through (c), (2), (3)(a) in part, and (c) through (e).

Language barring announcement by a judge as to views on cases, controversies, or issues likely to come before the judge has been omitted in light of *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S. Ct. 2528 (2002). Accordingly, Canon 5C has been modified to include the status of lawyers as candidates.

Canon 5D is derived in part from ABA Code (2000), Canon 5E except the first sentence. The provisions of Canon 5 that are applicable to lawyers who are candidates for judicial office are included in Rule 8.2 of the Maryland [Lawyers'] Rules of Professional Conduct. Under Canon 5D, the status of the candidate during the campaign - whether the candidate is a judge or a lawyer who is not a judge - determines whether Canon 5 or Rule 8.2 (b) of the Maryland [Lawyers'] Rules of Professional Conduct governs the behavior of the candidate. The status of the candidate when disciplinary proceedings are initiated determines whether the judicial disciplinary process or the attorney disciplinary process is used.

### **Canon 6**

Canon 6A is derived from Maryland Code (1987), Canon 6A, with the Committee note omitted.

Canon 6B is derived from Maryland Code (1987), Canon 6B, with substitution of "Canons" for "any of the provisions of this Code of Judicial Conduct" to clarify that a judge can be charged only with violating a Canon and not a Comment or Committee note.

Canon 6C is derived from Maryland Code (1987), Canon 6C, but with Canon 4D (4) made applicable to recalled judges.

Canon 6D is derived from ABA Code (2000), Canon 6F.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-814, as follows:

Rule 16-814. MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

Preamble

The Court of Appeals has adopted this Code of Conduct for **Judicial Appointees** to govern the conduct of all **judicial appointees**. This Code is generally patterned after the Maryland Code of Judicial Conduct, set forth in Rule 16-813, and the Committee notes, following many of the provisions of that Code, explain those provisions and may be of assistance in the interpretation of parallel provisions of this Code.

This Code sets forth minimum standards and is not intended as a limitation on an appointing authority's power to impose additional requirements.

## Terminology

In this Code the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Fiduciary

"**Fiduciary**" includes administrator, attorney-in-fact by power of attorney, executor, guardian, personal representative, and trustee.

Cross reference: See Canons 3D (1)(c) and (2) and 4E. For a definition of "guardian," see Rule 1-202 (j).

(b) Gift

"**Gift**" has the meaning stated in Code, State Government Article, §15-102.

Cross reference: See Canon 4D (5).

(c) Honorarium

"**Honorarium**" has the meaning stated in Code, State Government Article, §15-102.

(d) Impartial, Impartiality, or Impartially

"**Impartial,**" "**impartiality,**" or "**impartially**" denotes absence of bias or prejudice in favor of, or against, a party or class of parties, as well as maintaining an open mind in considering each issue that is or may come before the judicial appointee.

Cross reference: See Canons 2A; 3A, B (9) and D (1); 4A (1); and 5B (1)(a) and (d).

(e) Judicial Appointee

**"Judicial appointee"** means: (1) an auditor, examiner, master, or referee appointed by the Court of Appeals, the Court of Special Appeals, a circuit court, or an orphans' court; or (2) a commissioner appointed by a District Administrative Judge with the approval of the Chief Judge of the District Court of Maryland.

Cross reference: For the definition of judicial appointee for purposes of filing a financial disclosure statement, see Rule 16-816 a.

**Alternative A - Rules Committee's Version**

**(f) Knowingly, Knowledge, Known, or Knows**

**"Knowingly," "knowledge," "known," or "knows"** means actual knowledge of the fact in question. Actual knowledge may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(iii) and (iv) and F (2) and (3) and 5B (1)(e).

**Alternative B - Judicial Ethics Committee's Version**

**(f) Know**

**"Know"** means to have actual knowledge of the fact in question, as may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(iii) and (iv) and F (2) and (3) and 5B (1)(e).

**(g) Member of Judicial Appointee's Family**

**"Member of the judicial appointee's family"** means a spouse, child, grandchild, parent, grandparent, or other relative

or individual with whom a **judicial appointee** maintains a close familial relationship.

Cross reference: See Canons 3D (1)(c) and 4G (1).

(h) Member of Judicial Appointee's Household

**"Member of the judicial appointee's household"** has the meaning stated in Code, State Government Article, §15-102 for "member of household."

Cross reference: See Canons 3D (2) and 4D (5).

(i) Political Organization

**"Political organization"** means a political party or other group, the principal purpose of which is to further the election or appointment of a candidate to political office.

Cross reference: See Canon 5B (1)(b) and (c).

(j) Require

**"Require,"** in the context that a **judicial appointee** **"require"** certain conduct of others, means that the **judicial appointee** is to take reasonable steps to direct and control the conduct of those persons.

Cross reference: See Canon 3B (3), (5), (8), and (10) and C (2).

(k) Significant Financial Interest

#### Alternative A - Rules Committee's Version

(1) **"Significant financial interest"** means ownership of:

(A) an interest as the result of which the owner has received within the past three years, is currently receiving, or

in the future is entitled to receive, more than \$1,000 per year;

(B) more than 3% of a business entity; or

(C) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

Alternative B - Judicial Ethics Committee's Version

(1) "Significant financial interest" means:

(A) ownership of an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year; or

(B) ownership by a judicial appointee or judicial appointee's spouse of:

(i) more than 3% of a business entity; or

(ii) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

(2) In applying this definition:

(A) ownership of an interest in a mutual or common investment fund that holds a security is not ownership of the security unless:

(i) the **judicial appointee** [Alternative B - Add: "or spouse" here] participates in the management of the fund; or

(ii) there is before the **judicial appointee** a proceeding

that could substantially affect the value of the interest, or such proceeding is imminent;

(B) ownership of a government security is not a **significant financial interest** in the issuer unless there is before the **judicial appointee** a proceeding that could substantially affect the value of the security, or such proceeding is imminent;

(C) neither a deposit in a financial institution nor a proprietary interest such as or similar to that of a depositor in a mutual savings association, member in a credit union, or policy holder in a mutual insurance company is a **significant financial interest** in the entity unless there is before the **judicial appointee** a proceeding that could substantially affect the value of the deposit or interest, or such proceeding is imminent; and

(D) an ownership interest in a security held by a charitable, civic, educational, fraternal or sororal, or religious organization will not be imputed to a **judicial appointee** merely because the **judicial appointee** or the **judicial appointee's** child, parent, or spouse is an adviser to or director or officer of, or otherwise actively participates in, the organization.

Cross reference: See Canon 3D (1)(c) and (d)(iii).

(1) Third Degree of Relationship

"**Third degree of relationship**" means the relationship between a **judicial appointee** and the following individuals: a great-grandparent, grandparent, parent, uncle, aunt, brother,

sister, child, grandchild, great-grandchild, nephew, or niece.

Cross reference: See Canon 3D (1)(d).

## CANON 1

### *Integrity and Independence*

An independent and honorable judicial system is indispensable to justice in our society. A **judicial appointee** shall observe high standards of conduct so that the integrity and independence of the judicial system will be preserved. The provisions of this Code are to be construed and applied to further that objective.

## CANON 2

### *Avoidance of Impropriety and the Appearance of Impropriety*

A. A **judicial appointee** shall avoid impropriety and the appearance of impropriety. A **judicial appointee** shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the **impartiality** and integrity of the judicial system.

#### COMMENT

Public confidence in the judicial system is eroded by irresponsible or improper conduct by **judicial appointees**. A **judicial appointee** must expect to be the subject of constant public scrutiny. A **judicial appointee** must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on a **judicial appointee's** speech imposed by Canon 3B (8) and (9) that are indispensable to the maintenance of the **impartiality**, independence, and integrity of the judicial system.

The obligation to avoid impropriety and the appearance of impropriety applies to both the professional and personal conduct of a **judicial appointee**. Because it is not practicable to list all prohibited acts, the obligation is necessarily cast in general terms that extend to conduct by **judicial appointees** that is harmful although not specifically mentioned in this Code. Actual improprieties under this standard include violations of law, other specific provisions of this Code, or other court rules. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the **judicial appointee's** ability to carry out official responsibilities with competence, **impartiality**, and integrity is impaired. See also the Comment to Canon 2C.

B. A **judicial appointee** shall not allow official conduct to be improperly influenced by a family, political, social, or other

relationship or by an employment offer or opportunity. A **judicial appointee** shall not lend or use the prestige of the position to advance the private interests of the **judicial appointee** or others; nor shall a **judicial appointee** convey or permit others to convey the impression that they are in a special position to influence official conduct. A **judicial appointee** shall not testify voluntarily as a character witness.

#### COMMENT

Maintaining the prestige of the position of **judicial appointee** is essential to a system of government in which the judicial system functions independently of the executive and legislative branches. Respect for the position of **judicial appointee** facilitates the orderly conduct of legitimate judicial functions. **Judicial appointees** should distinguish between proper and improper use of the prestige of position in all of their activities. For example, it would be improper for a **judicial appointee** to allude to his or her position to gain a personal advantage, such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, official letterhead must not be used for conducting a **judicial appointee's** personal business.

A **judicial appointee** also must avoid lending or using the prestige of the position for the advancement of the private interests of others. For example, a **judicial appointee** must not use the position to gain advantage in a civil suit involving a **member of the judicial appointee's family**. As to the acceptance of awards, see Canon 4D (5)(c) and the accompanying Comment.

Although a **judicial appointee** should be sensitive to possible abuse of the prestige of the position, the **judicial appointee** may serve as a reference or provide a letter of recommendation based on the **judicial appointee's** own **knowledge**.

**Judicial appointees** may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration.

A **judicial appointee** must not testify voluntarily as a character witness because to do so may lend the prestige of the position in support of the party for whom the **judicial appointee** testifies. A **judicial appointee** may, however, testify when properly subpoenaed.

C. A **judicial appointee** shall not hold membership in any organization that practices invidious discrimination on the basis of national origin, race, religion, or sex.

#### COMMENT

Membership of a **judicial appointee** in an organization that practices invidious discrimination on the basis of national origin, race, religion, or sex gives rise to perceptions that the **judicial appointee's impartiality** is impaired. It is therefore inappropriate for a **judicial appointee** to continue to hold membership in an organization that the **judicial appointee knows**, or reasonably should **know**, practices and will continue to practice such invidious discrimination so as to give rise to the perception that the **judicial appointee's impartiality** is impaired. Membership in an organization would not be prohibited unless that membership would reasonably give rise to a perception of partiality. Certain organizations - such as congregational brotherhoods, sisterhoods, or bowling leagues - may well be restricted to individuals belonging to the particular congregation and therefore to those sharing a particular religious belief, but it is unlikely that membership in such an organization would cause people reasonably to believe that the **judicial appointee** is partial.

Whether an organization practices and will continue to practice that kind of invidious discrimination is often a complex question to which **judicial appointees** should be sensitive. The answer cannot be determined merely from an examination of an organization's current membership rolls but may depend on (1) the nature and purpose of the organization, (2) any restrictions on membership, (3) the history of the organization's selection of members, and (4) other relevant factors such as that the organization is dedicated to the preservation of cultural, ethnic, or religious values of legitimate common interests to its members, or that it is, in fact and effect, an intimate, purely private organization whose membership limitations could not be

constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership, on the basis of national origin, race, religion, or sex, individuals who otherwise would be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of national origin, race, religion, or sex, a **judicial appointee's** membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 for a **judicial appointee** to arrange a meeting at a club that the **judicial appointee knows** practices invidious discrimination on the basis of national origin, race, religion, or sex, in its membership or other policies, or for the **judicial appointee** to use such club regularly. Moreover, public manifestation by a **judicial appointee** of his or her **knowing** approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the **impartiality** and integrity of the judicial system, in violation of Canon 2A.

When a **judicial appointee** learns that an organization to which the **judicial appointee** belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2A, the **judicial appointee** is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in all other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the **judicial appointee's** first learning of the practices), the **judicial appointee** is required to resign immediately from the organization.

## CANON 3

### *Performance of Official Duties*

In the performance of official duties, the following standards apply.

#### A. GENERAL RESPONSIBILITIES.

A **judicial appointee** shall perform the duties of the position diligently, **impartially**, and without having or manifesting bias or prejudice, including bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status.

#### COMMENT

A **judicial appointee** must perform his or her duties fairly and **impartially**. A **judicial appointee** who manifests bias of any kind in a proceeding impairs the fairness of the proceeding and brings the judicial system into disrepute. Facial expression and body language, in addition to oral communication, can give an appearance of bias. A **judicial appointee** must be alert to avoid behavior that may be perceived as prejudicial. For example, a **judicial appointee** must refrain from comment, gesture, or other conduct that could reasonably be perceived as sexual harassment.

#### Alternative A - Rules Committee's Version

#### B. RESPONSIBILITIES FOR THE CONDUCT OF PROCEEDINGS.

#### Alternative B - Judicial Ethics Committee's Version

#### B. ADJUDICATIVE RESPONSIBILITIES.

(1) A **judicial appointee** shall be faithful to the law and maintain professional competence in it.

(2) A **judicial appointee** shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A **judicial appointee** shall **require** order and decorum in proceedings before the **judicial appointee**.

(4) A **judicial appointee** shall be dignified.

(5) A **judicial appointee** shall be courteous to and patient with lawyers, litigants, witnesses, and others with whom the **judicial appointee** deals in an official capacity and shall **require** similar conduct of lawyers and court personnel and others subject to the **judicial appointee's** direction and control.

#### COMMENT

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. **Judicial appointees** can be businesslike and efficient while being deliberate and patient.

(6) (a) A **judicial appointee** shall accord to every person who has a legal interest in a proceeding pending before the **judicial appointee**, or that person's lawyer, the right to be heard according to law.

(b) While presiding over a proceeding, a **judicial appointee** shall neither initiate, permit, or consider *ex parte* communications nor consider other communications made to the **judicial appointee** outside the presence of the parties concerning a pending or impending proceeding, except as otherwise provided

in Canon 3B (6).

(c) *Ex parte* communications that relate to scheduling or other administrative purposes or emergencies and not to substantive matters or issues on the merits are authorized, if: (i) circumstances require; (ii) the **judicial appointee** reasonably believes that no party will gain a procedural or tactical advantage as a result of the communication; (iii) the **judicial appointee** makes provision promptly to notify all other parties of the substance of the *ex parte* communication; and (iv) the **judicial appointee** affords the parties reasonable opportunity to respond.

(d) With the consent of the parties, a **judicial appointee** may confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the **judicial appointee**.

(e) A **judicial appointee** may obtain the advice of a disinterested expert on the law applicable to a proceeding if the **judicial appointee**: (i) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice; and (ii) affords the parties reasonable opportunity to respond.

(f) A **judicial appointee** may consult with court personnel whose function is to aid the **judicial appointee** in carrying out adjudicative responsibilities and with judges and other **judicial appointees**.

(g) A **judicial appointee** may initiate or consider an *ex parte* communication when expressly authorized by law to do so.

#### COMMENT

The prohibition against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent practicable, all parties or their lawyers must be included in communications with a **judicial appointee**.

Whenever Canon 3B (6) requires the presence of, or notice to, a party, it is the party's lawyer or, if the party is unrepresented, the party who is to be present or to whom notice is to be given.

Canon 3B (6) allows for limited *ex parte* communication to facilitate scheduling and other administrative purposes and to accommodate emergencies. Even then, however, a **judicial appointee** must discourage *ex parte* communication and allow it only if all of the criteria stated in Canon 3B (6) clearly are met. A **judicial appointee** must disclose to all parties all *ex parte* communication described in Canon 3B (6)(c) and (e) regarding a proceeding pending or impending before the **judicial appointee**.

A **judicial appointee** must not independently investigate facts in a case and must consider only the evidence presented, except matters of which the **judicial appointee** properly can take judicial notice.

A **judicial appointee** may request a party to submit proposed findings of fact and conclusions of law if all of the other parties are apprised of the request and given an opportunity to respond to the proposed findings and conclusions.

A **judicial appointee** must make reasonable efforts, including the provision of appropriate supervision, to ensure that Canon 3B (6) is not violated through personnel subject to the **judicial appointee's** direction and control.

(7) A **judicial appointee** shall dispose of official business efficiently, fairly, and promptly.

COMMENT

Prompt disposition of official business requires a **judicial appointee** to devote adequate time to official duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that personnel subject to the **judicial appointee's** direction and control and litigants and their lawyers cooperate to that end.

(8) A **judicial appointee** shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome of that proceeding or to impair the fairness of that proceeding and shall **require** similar abstention on the part of personnel subject to the **judicial appointee's** direction and control. Canon 3B (8) does not prohibit a **judicial appointee** from making public statements in the course of official duties or from explaining for public information the procedures of a court.

COMMENT

"Personnel subject to the **judicial appointee's** direction and control" does not include the lawyers in a proceeding before a **judicial appointee**. The conduct of lawyers in this regard is governed by Rule 3.6 of the Maryland [Lawyers'] Rules of Professional Conduct.

(9) With respect to a case, controversy, or issue that is likely to come before the court, a **judicial appointee** shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the duties of the appointed position.

## COMMENT

Canon 3B (8) and (9) restrictions on a **judicial appointee's** speech are essential to the maintenance of the **impartiality**, independence, and integrity of the judicial system. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that a **judicial appointee** abstain from public comment regarding a pending or impending proceeding continues during any trial court or appellate process and until final disposition.

(10) A **judicial appointee** shall **require** lawyers in proceedings before the **judicial appointee** to refrain from manifesting, by word or conduct, bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. Canon 3B (10) does not preclude legitimate advocacy when such status or other similar factor is an issue in a proceeding.

(11) Unless recusal is appropriate, a **judicial appointee** shall hear and determine matters assigned to the **judicial appointee**.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records); Code, Tax-General Article, §13-1018 (tax information).

### C. ADMINISTRATIVE RESPONSIBILITIES.

(1) A **judicial appointee** shall discharge his or her administrative responsibilities without favoritism or nepotism

and shall cooperate with judges, other **judicial appointees**, and court officials in the administration of court business.

(2) A **judicial appointee** shall **require** court personnel and others subject to the **judicial appointee's** direction and control to observe the standards of diligence and fidelity that apply to the **judicial appointee** and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A **judicial appointee** shall not make unnecessary appointments and shall not approve compensation of appointees beyond the fair value of services rendered.

#### COMMENT

Consent by the parties to an appointment or an award of compensation does not relieve a **judicial appointee** of the obligation prescribed by Canon 3C (3).

#### D. RECUSAL.

(1) A **judicial appointee** shall recuse himself or herself from a proceeding in which the **judicial appointee's impartiality** might reasonably be questioned, including an instance when:

(a) the **judicial appointee** has a personal bias or prejudice concerning a party or a party's lawyer or extra-official **knowledge** of a disputed evidentiary fact concerning the proceeding;

(b) (i) the **judicial appointee** served as a lawyer in the matter in controversy, or a lawyer with whom the **judicial**

**appointee** previously practiced law served during such association as a lawyer concerning the matter, or the **judicial appointee** has been a material witness concerning it;

COMMENT

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of Canon 3D (1)(b); a **judicial appointee** formerly employed by a governmental agency, however, should not participate in a proceeding if the **judicial appointee's impartiality** might reasonably be questioned because of such association.

(ii) if a **judicial appointee** is part-time, the **judicial appointee** or any attorney with whom the **judicial appointee** is associated, represents a party or otherwise has an interest in the proceeding;

(c) the **judicial appointee knows** that he or she, individually or as a **fiduciary**, or a **member of the judicial appointee's family**, has a **significant financial interest** in the subject matter in controversy or in a party to the proceeding;

COMMENT

There may be situations that involve a lesser financial interest but nonetheless require recusal because of the **judicial appointee's** own sense of propriety. Conversely, there are situations where participation may be appropriate even though the "financial interest" threshold is present. In the latter case, the **judicial appointee** first must obtain an opinion from the Judicial Ethics Committee with regard to the appropriateness, except as provided in Canon 3E (Non-recusal by Agreement).

(d) the **judicial appointee**, the **judicial appointee's** spouse, an individual within the **third degree of relationship** to either of them, or the spouse of such an individual:

(i) is a party to the proceeding or a director, officer, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

#### COMMENT

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the **judicial appointee** is affiliated does not of itself require recusal of the **judicial appointee**. Under appropriate circumstances, the fact that "the **judicial appointee's impartiality** might reasonably be questioned" under Canon 3D (1), or that the lawyer-relative is **known** by the **judicial appointee** to have an interest in the law firm that could be "substantially affected by the proceeding" under Canon 3D (1)(d)(iii), may require the **judicial appointee's** recusal.

(iii) is **known** by the **judicial appointee** to have a **significant financial interest** that could be substantially affected by the proceeding; or

(iv) is to the **judicial appointee's knowledge** likely to be a material witness in the proceeding; or

(e) the **judicial appointee**, while a **judicial appointee** or a candidate for judicial office, has made a public statement that commits, or appears to commit, the **judicial appointee** with respect to:

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

(2) A **judicial appointee** shall keep informed about his or her personal and **fiduciary** financial interests and shall make a reasonable effort to keep informed about the personal financial interests of each **member of the judicial appointee's household**.

## COMMENT

Under Canon 3D (1), a **judicial appointee** must recuse himself or herself whenever the **judicial appointee's impartiality** might reasonably be questioned, regardless of whether any of the specific instances in Canon 3D (1) apply.

A **judicial appointee** must disclose on the record information that the **judicial appointee** believes the parties or their lawyers might consider relevant to the question of recusal, even if the **judicial appointee** believes that there is no real basis for recusal.

By decisional law, the rule of necessity may override the rule of recusal. As to a judge, for example, the judge might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, a **judicial appointee** must disclose on the record the basis for possible recusal and, if practicable, use reasonable efforts to transfer the matter promptly to another **judicial appointee** or judge.

### E. NON-RECUSAL BY AGREEMENT.

If recusal would be required by Canon 3D, the **judicial appointee** may disclose on the record the reason for the recusal. If after disclosure of any reason for recusal other than as required by Canon 3D (a)(1), the parties and lawyers, out of the presence of the **judicial appointee**, all agree that the **judicial appointee** need not recuse himself or herself, and the **judicial appointee** is willing to participate, the agreement of the parties shall be incorporated in the record, and the **judicial appointee** may participate in the proceeding.

## COMMENT

This procedure gives the parties an opportunity to waive the recusal if the **judicial appointee** agrees. The **judicial appointee** may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the **judicial appointee**. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a **judicial appointee** may wish to have all parties and their lawyers sign a waiver agreement.

### F. DISCIPLINARY RESPONSIBILITIES.

(1) A **judicial appointee** should take or initiate appropriate corrective measures with respect to the unprofessional conduct of a judge, another **judicial appointee**, or a lawyer.

(2) If other corrective measures are not appropriate or, if attempted, were not successful, a **judicial appointee** shall inform the Commission on Judicial Disabilities of facts **known** to that **judicial appointee** that raise a substantial question as to a judge's fitness for office.

(3) If other corrective measures are not appropriate or, if attempted, were not successful, a **judicial appointee** shall inform the Attorney Grievance Commission of facts **known** to the **judicial appointee** that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(4) Acts of a **judicial appointee** required or permitted by Canon 3F (1), (2), or (3) shall be absolutely privileged, and no civil action predicated thereon may be instituted against the

**judicial appointee.**

COMMENT

Permitting a **judicial appointee** to take "corrective" measures gives the **judicial appointee** a wide range of options to deal with unprofessional conduct. Appropriate corrective measures may include direct communication with the judge, **judicial appointee**, or lawyer who is believed to have committed the violation or other direct action if available. There may be instances of professional misconduct that would warrant a private admonition or referral to a bar association counseling service.

## CANON 4

### *Extra-Official Activities*

#### A. EXTRA-OFFICIAL ACTIVITIES IN GENERAL.

A **judicial appointee** shall conduct all extra-official activities so that they do not:

- (1) cause a substantial question as to the **judicial appointee's** capacity to act **impartially** as a **judicial appointee**;
- (2) demean the position; or
- (3) interfere with the proper performance of official duties.

#### COMMENT

Complete separation of a **judicial appointee** from extra-official activities is neither possible nor desirable. A **judicial appointee** should not become isolated from the **judicial appointee's** community.

An extra-official activity, however, may be perceived to reflect on a **judicial appointee's** behavior. For example, an expression of bias or prejudice by a **judicial appointee**, even outside his or her official activities, may cause a substantial question as to the **judicial appointee's** capacity to act **impartially** as a **judicial appointee**. Expressions that may do so include jokes or other remarks demeaning individuals on the basis of their age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. See Canon 2C and the accompanying Comment.

#### B. AVOCATIONAL ACTIVITIES.

Subject to other provisions of this Code, a **judicial appointee** may lecture, speak, teach, write, and otherwise participate in other extra-official activities concerning the

administration of justice, the legal system, improvement of the law, and non-legal matters.

#### COMMENT

A **judicial appointee** is in a unique position to contribute to the administration of justice, the legal system, and improvement of the law, including revision of substantive and procedural law and improvement of criminal and juvenile justice. As time may permit, a **judicial appointee** is encouraged to do so, either independently or through a bar association or other organization dedicated to the improvement of the law.

The phrase "subject to other provisions of this Code" is used, in this and other sections of Canon 4, primarily in connection with a **judicial appointee's** charitable, civic, or governmental activities, to remind **judicial appointees** that use of permissive language in various sections of this Code does not relieve a **judicial appointee** from the other provisions of this Code that apply to the specific conduct.

#### C. CHARITABLE, CIVIC, AND GOVERNMENTAL ACTIVITIES.

(1) Except when acting *pro se* in a matter that involves the **judicial appointee** or the **judicial appointee's** interests, when acting as to a matter that concerns the administration of justice, the legal system, or improvement of the law, or when acting as otherwise allowed under Canon 4, a **judicial appointee** shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official.

#### COMMENT

As suggested in the *Reporter's Notes to the ABA Model Code of Judicial Conduct* (1990), the "administration of justice" is not limited to "matters of judicial administration" but is broad enough to include other matters relating to a judicial system.

Alternative A - Rules Committee's Version

(2) Except as otherwise provided by law and subject to Canon 4A, a judicial appointee may accept appointment to a governmental commission, committee, or position.

Alternative B - Judicial Ethics Committee's Version

(2) Except as otherwise provided by law and subject to Canon 4A, a judicial appointee may accept appointment to a governmental advisory commission, committee, or position.

COMMENT

A **judicial appointee** may not accept a governmental appointment that could interfere with the effectiveness and independence of the judicial system, assume or discharge an executive or legislative power (Maryland Declaration of Rights, Article 8), or hold an "office" under the constitution or other laws of the United States or State of Maryland (Maryland Declaration of Rights, Articles 33 and 35).

(3) A judicial appointee may represent this country, a state, or a locality on ceremonial occasions or in connection with cultural, educational, or historical activities.

(4) (a) Subject to other provisions of this Code, a **judicial appointee** may be a director, member, non-legal adviser, officer, or trustee of a charitable, civic, educational, fraternal or sororal, law-related, or religious organization.

COMMENT

See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code." As an example of the

meaning of the phrase, a **judicial appointee** permitted under Canon 4C (4) to serve on the board of an organization may be prohibited from such service by, for example, Canon 2C or 4A, if the organization practices invidious discrimination or if service on the board otherwise causes a substantial question as to the **judicial appointee's** capacity to act **impartially** as a **judicial appointee** or as to service as a legal adviser.

(b) A **judicial appointee** shall not be a director, member, non-legal adviser, officer, or trustee of an organization that is conducted for the economic or political advantage of its members.

(c) A **judicial appointee** shall not be a director, member, non-legal adviser, officer, or trustee of an organization if it is likely that the organization:

(i) will be engaged regularly in adversary proceedings in any court; or

(ii) deals with people who are referred to the organization by any court.

#### COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a **judicial appointee** regularly to reexamine the activities of each organization with which the **judicial appointee** is affiliated to determine whether it is proper to continue a relationship with it. For example, in many jurisdictions, charitable organizations are more frequently in court now than in the past or make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(d) (i) A **judicial appointee** shall not participate personally in:

(A) solicitation of funds or other fund-raising activities, except that a **judicial appointee** may solicit funds

from other **judicial appointees** over whom the **judicial appointee** does not exercise supervisory authority; or

(B) a membership solicitation that reasonably might be perceived as coercive or, except as permitted in Canon 4C (4)(d)(i)(A), is essentially a fund-raising mechanism.

(ii) A **judicial appointee** shall not participate as a guest of honor or speaker at a fund-raising event.

(iii) Except as otherwise allowed by Canon 4C (4)(d), a **judicial appointee** shall not use or lend the prestige of his or her position for fund-raising or membership solicitation.

(iv) A **judicial appointee** may:

(A) assist an organization in planning fund-raising;

(B) participate in the investment and management of an organization's funds; and

(C) make recommendations to private and public fund-granting organizations on programs and projects concerning the administration of justice, the legal system, or improvement of the law.

#### D. FINANCIAL ACTIVITIES.

(1) A **judicial appointee** shall not engage in business or financial dealings that:

(a) reasonably would be perceived to violate Canon 2B; or

(b) involve the **judicial appointee** in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the **judicial appointee** or the appointing court in matters relating to the **judicial appointee's** duties and authority.

#### COMMENT

Canon 4D (1)(b) is necessary to avoid creating an appearance of exploitation of position or favoritism and to minimize the potential for recusal. A **judicial appointee** also should discourage **members of the judicial appointee's family** from engaging in dealings that reasonably would appear to exploit the **judicial appointee's** position. With respect to affiliation of relatives of the **judicial appointee** with law firms appearing before the **judicial appointee**, see the Comment to Canon 3D (1)(d) relating to recusal.

Participation by a **judicial appointee** in business and financial dealings is subject to the general prohibitions in Canon 4A against activities that cause a substantial question as to **impartiality**, demean the position, or interfere with the proper performance of official duties. Such participation also is subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against misuse of the prestige of the position. In addition, a **judicial appointee** must maintain high standards of conduct in all of the **judicial appointee's** activities, as set forth in Canon 1. See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code."

Canon 4D is not intended to apply to the practice of law of part-time **judicial appointees**, which is covered by Canon 4G (2).

(2) Subject to other provisions of this Code, a **judicial appointee** may hold and manage investments, including real estate, and engage in other remunerative activity except that a full-time **judicial appointee** shall not hold directorship

or office in a bank, insurance company, lending institution, public utility, savings and loan association, or other business, enterprise, or venture that is affected with a public interest.

(3) A **judicial appointee** shall manage investments and other financial interests to minimize the number of cases in which recusal would be required. As soon as practicable without serious financial detriment, a **judicial appointee** shall dispose of those financial interests that might require frequent recusal.

(4) A **judicial appointee** shall neither use nor disclose, in financial dealings or for any other purpose not related to the **judicial appointee's** official duties, information that is acquired in his or her official capacity and that is confidential, privileged, or otherwise not part of the public record.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records) and Code, Tax-General Article, §13-1018 (tax information).

(5) A **judicial appointee** shall not accept, and shall urge **members of the judicial appointee's household** not to accept, a bequest, favor, **gift**, or loan from anyone except for:

(a) a book, tape, or other resource material supplied by a publisher on a complimentary basis for official use, a **gift** incident to a public testimonial, or an invitation to a **judicial**

**appointee** and the **judicial appointee's** spouse or guest to attend a bar-related function or an activity devoted to the administration of justice, the legal system, or improvement of the law;

(b) an award, benefit, or **gift** incident to the business, profession, or other separate activity of a spouse or other **member of the judicial appointee's household**, including an award, benefit, or **gift** for the use of both the household member and **judicial appointee** (as spouse or household member) if the award, benefit, or **gift** could not reasonably be perceived as intended to influence the **judicial appointee** in the performance of official duties;

(c) ordinary social hospitality;

(d) a **gift** from a friend or relative for a special occasion, such as an anniversary, birthday, or wedding, if the **gift** is fairly commensurate with the occasion and the friendship or relationship;

(e) a bequest, favor, **gift**, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require a recusal under Canon 3D;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not **judicial appointees**;

(g) a fellowship or scholarship awarded on the same terms and based on the same criteria applied to other applicants;

or

(h) any other bequest, favor, **gift**, or loan if: (1) the donor or lender is not a person whose interests have come or are likely to come before the **judicial appointee** and (2) the **judicial appointee** reports, on the **judicial appointee's** financial disclosure form, all bequests, favors, **gifts**, and loans required under Rule 16-816 to be reported.

E. **FIDUCIARY ACTIVITIES.**

While a **judicial appointee** is not absolutely disqualified from holding a **fiduciary** position, a **judicial appointee** shall not accept or continue to hold such position if doing so would interfere or seem to interfere with the proper performance of official duties, or if the business interests of those represented require investments in enterprises that are apt to come before the **judicial appointee** officially or tend to be involved in questions to be determined by the **judicial appointee**.

F. **SERVICE AS ARBITRATOR OR MEDIATOR.**

A full-time **judicial appointee** shall not act as an arbitrator or mediator or otherwise perform official functions in a private capacity unless expressly authorized by law.

COMMENT

Canon 4F does not preclude a **judicial appointee** from participating in settlement conferences or applying methods of

alternative dispute resolution that are included in the **judicial appointee's** official duties. If by reason of disclosure made during or as a result of a settlement conference or other alternative dispute resolution proceeding, the **judicial appointee's impartiality** might reasonably be questioned, the **judicial appointee** should not participate in the matter further. See Canon 3D (1).

#### G. PRACTICE OF LAW.

(1) Except as allowed by Canon 4G, a **judicial appointee** shall not practice law. Notwithstanding this prohibition, a **judicial appointee** may act *pro se* in a matter involving the **judicial appointee** or the **judicial appointee's** interest and, if without compensation, may give legal advice to and draft or review documents for a **member of the judicial appointee's family**.

(2) To the extent not expressly prohibited by law or the appointing authority and subject to other applicable provisions of this Code, a part-time **judicial appointee** may practice law.

(3) A **judicial appointee** shall avoid conduct whereby the **judicial appointee** uses or seems to use the appointee's position to further success in the practice of law.

(4) A **judicial appointee** shall not appear as an individual in a matter involving the **judicial appointee** or the **judicial appointee's** interest in the appointing court.

(5) Prior to assuming official duties, a full-time **judicial appointee** should enter into an agreement for payments relating to the **judicial appointee's** former law practice. A payment period

limited to a maximum of five years or less is presumptively reasonable.

#### COMMENT

Canon 4G (1) limits the practice of law in a representative capacity but not in a *pro se* capacity. A **judicial appointee** may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a **judicial appointee** must not abuse the prestige of the position for any reason, including advancement of an interest of the **judicial appointee** or the **judicial appointee's** family. See Canons 2B and 4C (1).

This Code allows a **judicial appointee** to give legal advice to, and draft legal documents for, a **member of the judicial appointee's family**. However, except for a part-time **judicial appointee** allowed to practice law, a **judicial appointee** must not receive any compensation from, or act as an advocate or negotiator for, a **member of the judicial appointee's family** in a legal matter. A part-time **judicial appointee** must not act contrary to a prohibition of the appointing authority.

#### H. COMPENSATION AND REIMBURSEMENT.

Unless otherwise prohibited by law, a **judicial appointee** may receive compensation and reimbursement of expenses for extra-official activities permitted by this Code if:

(1) the source of compensation or reimbursement does not give the appearance of impropriety;

(2) the compensation does not exceed a reasonable amount and does not exceed the amount a person who is not a **judicial appointee** ordinarily would receive for the same activity; and

(3) the expense reimbursement is limited to the actual cost of food, lodging, and travel reasonably incurred by a **judicial**

**appointee** and, if appropriate to the occasion, by the **judicial appointee's** spouse or guest.

COMMENT

Acceptance of an "**honorarium**," as defined in Code, State Government Article, §15-102 (r), is governed by Code, State Government Article, §15-505. See Judicial Ethics Opinion No. 128 (issued February 2, 2000).

A **judicial appointee** must disclose financial matters such as debts or income, investments, or other assets, only to the extent required by Canon 4H, by Canon 3D or E, or by law. See Code, State Government Article, §15-610.

CANON 5

*Political Activity*

A. POLITICAL CONDUCT OF **JUDICIAL APPOINTEE** WHO IS NOT CANDIDATE.

(1) A **judicial appointee** who is not a candidate for election to judicial office shall not engage in any partisan political activity.

(2) (A) Except as otherwise provided in Canon 5A (2), a **judicial appointee** shall resign the appointed position when the **judicial appointee** becomes a candidate for a non-judicial office.

(B) A **judicial appointee** may continue to hold the appointed position while a candidate for election to, or delegate in, a Maryland constitutional convention.

B. POLITICAL CONDUCT OF **JUDICIAL APPOINTEE** WHO IS CANDIDATE.

(1) A **judicial appointee** who is a candidate for election to a judicial office may engage in partisan political activity allowed by law with respect to such candidacy, except that the **judicial appointee**:

(a) shall maintain the dignity appropriate to the appointed position and act in a manner consistent with the **impartiality**, independence, and integrity of the judicial system;

(b) shall not act as a leader or hold an office in a **political organization**;

(c) shall not make a speech for a candidate or **political organization** or publicly endorse a candidate for non-judicial office;

COMMENT

A **judicial appointee** does not publicly endorse a candidate for public office by having the judicial appointee's name on the same ticket.

(d) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office;

COMMENT

Canon 5B (1)(d) does not prohibit a candidate from making a pledge or promise respecting improvements in court administration or the faithful and **impartial** performance of the duties of the office.

(e) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact; and

(f) shall not allow any other person to do for the **judicial appointee** what the **judicial appointee** is prohibited from doing.

(2) A candidate for a judicial office may respond to a personal attack or an attack on the candidate's record as long as the response does not violate Canon 5B (1).

C. STATUS OF **JUDICIAL APPOINTEE** AS CANDIDATE.

"Candidate" applies to a **judicial appointee** seeking to be elected to a judicial office from the date on which the **judicial appointee** files a certificate of candidacy in accordance with the Maryland election laws, but no earlier than two years prior to the general election for the office.

D. DISCIPLINE.

A **judicial appointee** who is an unsuccessful candidate for judicial office and who is a lawyer is subject to attorney discipline for campaign conduct. A successful candidate is subject to judicial discipline for campaign conduct.

Cross reference: See Rules 16-701 through 16-781 concerning attorney discipline and Rules 16-802 through 16-810 concerning judicial discipline.

## CANON 6

### *Compliance*

Violation of any of the Canons by a **judicial appointee** is grounds for disciplinary action, including removal by the appointing authority.

Source: This Rule is derived in part from former Rule 1232 (renumbered Rule 16-814 by Rules Order dated January 18, 1996, effective July 1, 1996) and is in part new.

#### REPORTER'S NOTE

Proposed revised Rule 16-814 conforms the provisions of current Rule 16-814 to the comparable sections in proposed revised Rule 16-813 and makes certain stylistic changes as required by the revision.

In addition, a cross reference to the definition of judicial appointee in Rule 16-816 is proposed to be added following the definition of judicial appointee in the Terminology section of Rule 16-814. See the Reporter's note to the proposed amendments to Rule 16-816.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-816 to require the filing of financial disclosure statements by all masters and District Court Commissioners and to make certain stylistic changes, as follows:

Rule 16-816. FINANCIAL DISCLOSURE STATEMENT - JUDICIAL APPOINTEES

a. ~~In~~ For purposes of this Rule, ~~"judicial appointee" includes a full-time judicial appointee as defined in Maryland Rule 16-814 and any~~ judicial appointee means (1) a full- or part-time master, (2) a full- or part-time commissioner appointed by a District Administrative Judge with the approval of the Chief Judge of the District Court of Maryland, and (3) an auditor, examiner, auditor, or referee, or District Court commissioner as defined in that Rule who is full-time or who earns in any calendar year, by reason of the judicial appointee's official position, compensation at least equal to the pay provided for the base step of State Pay Grade 16, as in effect on July 1 of that calendar year. ~~If a judicial appointee~~ an auditor, examiner, or referee has served as such for only a portion of a calendar year, a pro rata determination of compensation shall be applied.

Cross reference: For the definition of judicial appointee for purposes of applying the Maryland Code of Conduct for Judicial Appointees, see the Terminology section of Rule 16-814.

b. Every judicial appointee shall file with the State Court Administrator an annual financial statement on the form prescribed by the Court of Appeals. When filed, a financial disclosure statement is a public record.

. . .

d. If ~~an~~ a judicial appointee who files a certificate of candidacy for nomination for an elected office has filed a statement pursuant to §15-605 or §15-610 (b) of the State Government Article, Annotated Code of Maryland, the judicial appointee need not file for the same period of time the statement required by paragraph c of this Rule.

. . .

g. (i) A judicial appointee who fails to file a timely statement, or who files an incomplete statement, shall be notified in writing by the State Court Administrator, and given a reasonable time, not to exceed ten days, within which to correct the deficiency. If the deficiency has not been corrected within the time allowed, the State Court Administrator shall report the matter to the ~~Committee on~~ Judicial Ethics Committee.

(ii) If the Committee finds, after inquiry, that failing to file or the omission of information was either inadvertent or in good faith belief that the omitted information was not required to be disclosed, the Committee shall give the judicial appointee

a reasonable period, not to exceed 15 days, within which to correct the deficiency. Otherwise, the Committee shall refer the matter to the State Ethics Commission. If ~~an~~ a judicial appointee who has been allowed additional time within which to correct a deficiency fails to do so within that time, the matter shall also be referred to the State Ethics Commission.

. . .

Source: This Rule is derived from former Rule 1234 and is part new.

#### REPORTER'S NOTE

At the request of the Judicial Cabinet, amendments to Rule 16-816 are proposed to require that all masters and District Court commissioners - whether full- or part-time - file financial disclosure statements. Currently, a part-time master or commissioner is required to file only if he or she meets the earnings requirements set forth in section a of the Rule.

Code, State Government Article, §15-610 (a) requires the Court of Appeals to adopt rules that require the individuals listed in §15-601 (b) to file a financial disclosure statement. Because the latter Code section states that judicial appointees are defined in Rule 16-814, a cross reference to Rule 16-816 a is proposed to be added following the definition of judicial appointee in the Terminology section of Rule 16-814.

In addition, a cross reference to the Terminology section of Rule 16-814 is proposed to be added following section a of Rule 16-816.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND RULES OF PROFESSIONAL CONDUCT

ADVOCATE

AMEND Rule 3.5 to add a new subsection (a)(8) prohibiting certain discussions of potential employment of a judge under certain circumstances and to correct a certain reference in the Comment, as follows:

Rule 3.5. IMPARTIALITY AND DECORUM OF THE TRIBUNAL

(a) A lawyer shall not:

(1) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;

(2) before the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with anyone known to the lawyer to be on the list from which the jurors will be selected for the trial of the case;

(3) during the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with any member of the jury;

(4) during the trial of a case with which the lawyer is not connected, communicate outside the course of official proceedings with any member of the jury about the case;

(5) after discharge of a jury from further consideration of a case with which the lawyer is connected, ask questions of or make comments to a member of that jury that are calculated to harass

or embarrass the juror or to influence the juror's actions in future jury service;

(6) conduct a vexatious or harassing investigation of any juror or prospective juror;

(7) communicate ex parte about an adversary proceeding with the judge or other official before whom the proceeding is pending, except as permitted by law; or

(8) discuss with a judge potential employment of the judge if the lawyer or a firm with which the lawyer is associated has a matter that is pending before the judge; or

~~(8)~~ (9) engage in conduct intended to disrupt a tribunal.

(b) A lawyer who has knowledge of any violation of section (a) of this Rule, any improper conduct by a juror or prospective juror, or any improper conduct by another towards a juror or prospective juror, shall report it promptly to the court or other appropriate authority.

#### COMMENT

Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in Rule 16-813, the Maryland Canons and Rules of Judicial Ethics Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively

than by belligerence or theatrics.

With regard to the prohibition in subsection (a)(2) of this Rule against communications with anyone on "the list from which the jurors will be selected," see Rules 2-512 (c) and 4-312 (c) of the Maryland Rules of Procedure.

Code Comparison.--With regard to Rule 3.5 (a) and (b), DR 7-108 (A) provides that "before the trial of a case a lawyer . . . shall not communicate with . . . anyone he knows to be a member of the venire . . . ." DR 7-108 (B) provides that "during the trial of a case . . . a lawyer . . . shall not communicate with . . . a juror concerning the case." DR 7-109 (C) provides that a lawyer shall not "communicate . . . as to the merits of the cause with a judge or an official before whom the proceeding is pending except . . . upon adequate notice to opposing counsel . . . (or) as otherwise authorized by law."

With regard to Rule 3.5 ~~(a)(8)~~ (a)(9), DR 7-106 (C)(6) provides that a lawyer shall not "engage in undignified or discourteous conduct which is degrading to a tribunal."

#### REPORTER'S NOTE

Lawyers' offers of employment to judges was the subject of House Bill 1398 (cross filed with Senate Bill 875) in the 2002 legislative session. When HB 1398 was withdrawn by its sponsor, the thought was that this topic could be addressed by rule, rather than by legislation.

The Rules Committee recommends that Rule 3.5 of the Maryland [Lawyers'] Rules of Professional Conduct be amended to prohibit a lawyer from discussing potential employment of a judge before whom the lawyer or the lawyer's firm has a pending matter. The Committee also recommends an addition to Canon 2B of proposed revised Rule 16-813, Maryland Code of Judicial Conduct, that expressly mentions employment offers and opportunities and requires that the judge not allow judicial conduct to be improperly influenced or appear to be improperly influenced by such offers or opportunities.

Additionally, a reference in the Comment to "Canons and Rules of Judicial Ethics" is proposed to be corrected to refer to Rule 16-813, the Maryland Code of Judicial Conduct.

MARYLAND RULES OF PROCEDURE  
APPENDIX - THE MARYLAND RULES OF  
PROFESSIONAL CONDUCT

AMEND Rule 8.2 (b) and the accompanying Comment to conform them to certain language of proposed revised Canon 5B of the Maryland Code of Judicial Conduct set forth in Rule 16-813, as follows:

Rule 8.2. JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) Canon 5C (4) of the Maryland Code of Judicial Conduct, set forth in Rule 16-813, provides that a lawyer becomes a candidate for a judicial office when the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for the office. A candidate for a judicial office: ~~position shall not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he shall not announce in advance his conclusions of law on disputed issues to secure class~~

~~support, and he shall do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.~~

(1) shall maintain the dignity appropriate to the office and act in a manner consistent with the impartiality, independence, and integrity of the judiciary;

(2) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;

Committee note: Rule 8.2 (b)(2) does not prohibit a candidate from making a commitment, pledge, or promise respecting improvements in court administration or the faithful and impartial performance of the duties of the office.

(3) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact;

(4) shall not allow any other person to do for the candidate what the candidate is prohibited from doing; and

(5) may respond to a personal attack or an attack on the candidate's record as long as the response does not otherwise violate this Rule.

#### COMMENT

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Code Comparison.-- With regard to Rule 8.2 (a), DR 8-102 (A) provides that "A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office." DR 8-102 (B) provides that "A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer."

~~Rule 8.2 (b) is identical to Canon XXIX of the Canons and Rules of Judicial Ethics, which is applicable to judges who are candidates for judicial office. Although the Maryland Disciplinary Rules have no counterpart to Rule 8.2 (b), DR 8-103 of the Model Code, adopted by the ABA after the Code was adopted in Maryland, is the same as Rule 8.2 (b) in substance.~~

Rule 8.2 (b) has no counterpart in the [former] Maryland Disciplinary Rules.

#### REPORTER'S NOTE

The proposed amendments to Rule 8.2 conform section (b) to the applicable standards pertaining to candidates for judicial office set forth in proposed revised Canon 5B of the Maryland Code of Judicial Conduct in Rule 16-813. The Rules Committee believes that the prohibitions set forth as Canon 5B (1)(b) and (1)(c) may not be constitutional as applied to lawyers who are not judges. Therefore, these prohibitions have not been included in Rule 8.2.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-327 to amend a certain cross reference, as follows:

Rule 4-327. VERDICT - JURY

. . .

Cross reference: See ~~Canon 3A-8~~ of Rule 16-813, (Maryland Code of Judicial Conduct), Canon 3B (1), regarding praise or criticism of a jury's verdict.

Source: This Rule is derived from former Rule 759.

REPORTER'S NOTE

Cross references that follow Rules 4-327, 5-606, and 17-105 are proposed to be amended to conform to the revision of Rules 16-813 and 16-814.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-605 to amend a certain cross reference, as follows:

Rule 5-605. COMPETENCY OF JUDGE AS WITNESS

. . .

Cross reference: See Rule 16-813, Maryland Code of Judicial Conduct, Canon ~~3E~~ 3D (1)(a) and ~~(1)~~(d)(iv).

Source: This Rule is derived from F.R.Ev. 605.

REPORTER'S NOTE

See the Reporter's Note to Rule 4-327.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-815 to correct certain terminology in subsection f. 1, as follows:

Rule 16-815. FINANCIAL DISCLOSURE STATEMENT

. . .

f. Failure to File Statement - Incomplete Statement.

1. A judge who fails to file a timely statement, or who files an incomplete statement, shall be notified in writing by the State Court Administrator, and given a reasonable time, not to exceed ten days, within which to correct the deficiency. If the deficiency has not been corrected within the time allowed, the State Court Administrator shall report the matter to the ~~Committee on Judicial Ethics~~ Committee.

. . .

REPORTER'S NOTE

The amendment to Rule 16-815 f. 1 is proposed to correctly state the name of the Judicial Ethics Committee.

MARYLAND RULES OF PROCEDURE  
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION  
CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-105 to amend a certain Cross reference, as follows:

Rule 17-105. QUALIFICATIONS AND SELECTION OF PERSONS OTHER THAN  
MEDIATORS AND NEUTRAL EXPERTS

. . .

Cross reference: See Rules 16-813, Maryland Code of Judicial Conduct, Canon ~~4H~~ 4F and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, Canon ~~4H~~ 4F.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to Rule 4-327.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-813, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

Preamble

It is fundamental to our legal system that our laws be interpreted by a competent, fair, honorable, and independent judiciary. Such a judiciary is essential to the American concept of justice. Intrinsic to all sections of this Code are the precepts that, individually and collectively, judges must honor and respect the judicial office as a public trust and strive to enhance and maintain public confidence in our legal system. A judge, as arbiter of facts and law for the resolution of disputes, is a highly visible symbol of government under the rule of law.

This Code sets forth basic standards for the conduct of all judges and provides guidance in establishing and maintaining high standards of judicial and personal conduct.

This Code consists of a Terminology section, Canons, which set forth specific rules of conduct, and Comments, which provide guidance on the purpose and meaning of the Canons but are not intended as statements of additional rules.

When "shall" or "shall not" is used in the text of a Canon, it is intended to impose a binding obligation, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding obligation under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, refers to action that is not covered by specific prohibitions.

Even as to binding obligations, however, it is not intended that every transgression result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should depend on factors such as the seriousness of the transgression, whether the transgression is isolated or part of a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

The Canons are rules of reason that should be applied in the context of all relevant circumstances and in a manner that is consistent with constitutional requirements, statutes, other court rules, and decisional law. This Code should be construed in a way that neither infringes on the essential independence of judges in making judicial decisions nor discourages candidates from seeking judicial office.

This Code includes a structure for regulating conduct through disciplinary agencies, when appropriate. It is not

intended to be a basis for civil liability or criminal prosecution. This Code should not be invoked for mere tactical advantage in a proceeding.

In interpreting this Code, attention should be given to the opinions of the Judicial Ethics Committee and, if appropriate, the Committee should be asked for a written letter of advice or a binding opinion.

Committee note: This Code replaces the Maryland Code of Judicial Conduct originally adopted by Rules Order dated November 21, 1986, effective July 1, 1987, as amended from time to time ("Maryland Code (1987)"). This Code is derived from the Maryland Code (1987) and the Model Code of Judicial Conduct adopted by the American Bar Association in 2000, with amendments in August 2003. The derivation of particular provisions of this Code is described in greater detail in the Source Note at the end of this Code.

The Judicial Ethics Committee has published opinions on issues such as a judge owning commercial real estate (permissible only if no appearance of impropriety would result), accepting an expense-paid trip, and granting a stet or probation conditioned on a criminal defendant making a monetary donation. Administrative Orders of the Chief Judge of the Court of Appeals also may provide guidance. For example, as to the anti-nepotism policy of the Judicial Branch, see the Orders dated October 3, 1996 and January 31, 1997.

## Terminology

Terms explained below are noted in boldface type in the Canons and Comments where they appear.

In this Code the following definitions apply except as expressly otherwise provided or as necessary implication requires:

### (a) Fiduciary

"**Fiduciary**" includes administrator, attorney-in-fact by power of attorney, executor, guardian, personal representative, and trustee.

Cross reference: See Canons 3D (1) (c) and (2) and 4E. For a definition of "guardian," see Rule 1-202 (j).

### (b) Gift

"**Gift**" has the meaning stated in Code, State Government Article, §15-102.

Cross reference: See Canon 4D (5).

### (c) Honorarium

"**Honorarium**" has the meaning stated in Code, State Government Article, §15-102.

### (d) Impartial, Impartiality, or Impartially

"**Impartial,**" "**impartiality,**" or "**impartially**" denotes absence of bias or prejudice in favor of, or against, a party or class of parties, as well as maintaining an open mind in considering each issue that is or may come before the judge.

Cross reference: See Canons 2A; 3A, B (9), and D (1); 4A (1); and 5B (1)(a) and (d).

Alternative A - Rules Committee's Version

(e) Knowingly, Knowledge, Known, or Knows

"Knowingly," "knowledge," "known," or "knows" means actual knowledge of the fact in question. Actual knowledge may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(iii) and (iv) and F (2) and (3) and 5B (1)(e).

Alternative B - Judicial Ethics Committee's Version

(e) Know

"Know" means to have actual knowledge of the fact in question, as may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(iii) and (iv) and F (2) and (3) and 5B (1)(e).

(f) Member of Judge's Family

"Member of the judge's family" means a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom a judge maintains a close familial relationship.

Cross reference: See Canons 3D (1)(c) and 4E (1)(b) and (d) and G (1).

(g) Member of Judge's Household

"Member of the judge's household" has the meaning stated in Code, State Government Article, §15-102 for "member of household."

Cross reference: See Canons 3D (2) and 4D (5).

(h) Political Organization

"Political organization" means a political party or other group, the principal purpose of which is to further the election or appointment of a candidate to political office.

Cross reference: See Canon 5B (1)(b) and (c).

(i) Require

"Require," in the context that a judge "require" certain conduct of others, means that the judge is to take reasonable steps to direct and control the conduct of those persons.

Cross reference: See Canon 3B (3), (5), (8), and (11) and C (2).

(j) Significant Financial Interest

Alternative A - Rules Committee's Version

(1) "Significant financial interest" means ownership of:

(A) an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year;

(B) more than 3% of a business entity; or

(C) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

Alternative B - Judicial Ethics Committee's Version

(1) "Significant financial interest" means:

(A) ownership of an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than

\$1,000 per year; or

(B) ownership by a judge or judge's spouse of:

(i) more than 3% of a business entity; or

(ii) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

(2) In applying this definition:

(A) ownership of an interest in a mutual or common investment fund that holds a security is not ownership of the security unless:

(i) the judge **[Alternative B - Add: "or spouse" here]** participates in the management of the fund; or

(ii) there is before the judge a proceeding that could substantially affect the value of the interest, or such proceeding is imminent;

(B) ownership of a government security is not a **significant financial interest** in the issuer unless there is before the judge a proceeding that could substantially affect the value of the security, or such proceeding is imminent;

(C) neither a deposit in a financial institution nor a proprietary interest such as or similar to that of a depositor in a mutual savings association, member in a credit union, or policy holder in a mutual insurance company is a **significant financial interest** in the entity unless there is before the judge a proceeding that could substantially affect the value of the

deposit or interest, or such proceeding is imminent; and

(D) an ownership interest in a security held by a charitable, civic, educational, fraternal or sororal, or religious organization will not be imputed to a judge merely because the judge or the judge's child, parent, or spouse is an adviser to or director or officer of, or otherwise actively participates in, the organization.

Cross reference: See Canon 3D (1)(c) and (d)(iii).

(k) Third Degree of Relationship

"Third degree of relationship" means the relationship between a judge and the following individuals: a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece.

Cross reference: See Canon 3D (1)(d).

## CANON 1

### Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge ~~should~~ shall observe high standards of conduct so that the integrity and independence of the judiciary ~~may~~ will be preserved. The provisions of this Code ~~should~~ are to be construed and applied to further that objective.

~~Committee note.--The American Bar Association Model Code of Judicial Conduct ("ABA Code") states that a judge should "participate in establishing, maintaining, and enforcing, and should himself" observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The Committee believes that even though desirable, a judge should not be obligated to participate in "establishing" standards of conduct. "Maintaining" and "enforcing" high standards of conduct are dealt with in Canon 3B (3).~~

### COMMENT

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their fairness, honesty, probity, soundness of character, and uprightness. An independent judiciary is one free of inappropriate outside influence. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the **impartiality** of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

## CANON 2

### Avoidance of Impropriety and the Appearance of Impropriety

A. A judge ~~should behave with propriety~~ shall avoid impropriety and ~~should avoid even~~ the appearance of impropriety. A judge ~~should~~ shall respect and comply with the law and ~~should~~ shall act at all times in a manner that promotes public confidence in the ~~integrity and impartiality~~ integrity of the judiciary. ~~The personal behavior of a judge in both the performance of judicial duties, and in everyday life, should be beyond reproach.~~

#### COMMENT

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on a judge's speech imposed by Canon 3B (8) and (9) that are indispensable to the maintenance of the **impartiality**, independence, and integrity of the judiciary.

~~The testimony of a judge as a character witness injects the prestige of judicial office into the proceeding in which a judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford a judge the privilege against testifying in response to an official summons.~~

The obligation to avoid impropriety and the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the obligation is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in this Code. Actual improprieties under this standard include violations of law, other specific provisions of this Code, or other court rules. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry

out judicial responsibilities with competence, impartiality, and integrity is impaired. See also the Comment to Canon 2C.

B. A judge ~~should~~ shall not allow judicial conduct to be improperly influenced or appear to be improperly influenced by a family, political, social, or other ~~relationships~~ relationship or by an employment offer or opportunity. A judge ~~should~~ shall not lend or use the prestige of judicial office to advance the private interests of the judge or others; nor ~~should~~ shall a judge convey or permit others to convey the impression that they are in a special position to influence judicial conduct. A judge ~~should~~ shall not testify voluntarily as a character witness.

~~Committee note.--The first and third sentences of Sec. 2A are derived from current Md. Canon IV. ABA Canon 2 relegates the first sentence of Section 2A to Commentary; but the Committee believes that it is sufficiently important to retain its status as part of the Canon. The second sentence of Sec. 2A is derived from ABA Canon 2A.~~

~~The first sentence and the second clause of the second sentence of Section 2B are derived from ABA Canon 2B and current Md. Canon XXXII. The first clause of the second sentence of Sec. 2B is derived from ABA Canon 2B and prohibits a judge from advancing the "private interests" of others, while current Md. Ethics Rule 9 applies the prohibition only to "private business interests" of others, which is somewhat narrower in scope. The broader prohibitory language in the ABA Canon is not meant to preclude a judge from writing a letter of recommendation or the like under appropriate circumstances, as discussed in Md. Judicial Ethics Opinion No. 98 (issued 7/16/82).~~

~~The last sentence of Sec. 2B is derived from ABA Canon 2B and current Md. Canon XIII.~~

~~The first paragraph of the Commentary is derived from a Commentary to ABA Section 2A of Canon 2.~~

~~The last paragraph of the Commentary is derived from a Commentary to ABA Canon 2 and is consistent with Md. Judicial~~

COMMENT

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage, such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge also must avoid lending or using the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a **member of the judge's family**. As to the acceptance of awards, see Canon 4D (5)(c) and the accompanying Comment.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may serve as a reference or provide a letter of recommendation based on the judge's own **knowledge**. A judge must not initiate, however, a personal communication of information to a sentencing judge or a corrections or probation officer but may provide to such officials information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of judicial office in support of the party for whom the judge testifies. A judge may, however, testify when properly subpoenaed.

Committee note: The Judicial Ethics Committee has held that a judge's judicial and non-judicial activities should not raise questions as to improper favoritism, partiality, or influence due to familial or social connections, indebtedness (such as might arise through referral of business to family or friend), political endorsement, acceptance of gifts, fund-raising, or entrepreneurial activities.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of national origin, race, religion, or sex, ~~religion or national origin~~.

#### COMMENT

Membership of a judge in an organization that practices invidious discrimination on the basis of national origin, race, religion, or sex, ~~religion or national origin~~ may give rise to perceptions that the judge's **impartiality** is impaired. It is therefore inappropriate for a judge to continue to hold membership in an organization that the judge **knows**, or reasonably should **know**, practices and will continue to practice such invidious discrimination so as to give rise to the perception that the judge's **impartiality** is impaired. Membership in an organization would not be prohibited unless that membership would reasonably give rise to a perception of partiality. Certain organizations - such as congregational brotherhoods, sisterhoods, or bowling leagues - may well be restricted to individuals belonging to the particular congregation and therefore to those sharing a particular religious belief, but it is unlikely that membership in such an organization would cause people reasonably to believe that the judge is partial.

Whether an organization practices and will continue to practice that kind of invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined merely from an examination of an organization's current membership rolls but may depend on (1) the nature and purpose of the organization, (2) any restrictions on membership, (3) the history of the organization's selection of members, and (4) other relevant factors such as that the organization is dedicated to the preservation of cultural, ethnic, or religious, ~~ethnic or cultural~~ values of legitimate common ~~interests~~ interest to its members, or that it is, in fact and effect, an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership, on the basis of national origin, race, religion, or sex or ~~national origin persons~~, individuals who would otherwise would be admitted to membership. See *New York State Club Ass'n. Inc. v. City of New York*, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940 (1987), 95 L. Ed. 2d 474; *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although ~~Section~~ Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of national origin, race, ~~sex~~, religion, or ~~national origin, sex~~, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2A and ~~Section 2A~~ and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and ~~Section 2A~~ for a judge to arrange a meeting at a club that the judge **knows** practices invidious discrimination on the basis of national origin, race, ~~sex~~, religion or ~~national origin, or sex~~, in its membership or other policies, or for the judge to **regularly** use such a club regularly. Moreover, public manifestation by a judge of the judge's **knowing** approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the ~~integrity and impartiality~~ and integrity of the judiciary, in violation of Section Canon 2A.

When a ~~person who is a judge on the date this code becomes effective~~ learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section Canon 2C or under Canon 2A and ~~Section 2A~~, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in ~~any~~ all other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

~~Committee note. -- After careful consideration, the Committee decided to make membership in organizations that practice invidious discrimination a violation of the Code. New Section 2C moves to black-letter text a principle that had been in the Commentary to Canon 2 of the 1989 Code. It was determined that it was neither appropriate nor workable to leave to each individual judge's conscience the determination whether an organization practices invidious discrimination, and this discretionary standard was removed from the Commentary.~~

~~The Commentary incorporates most of the Commentary to ABA Section 2C of Canon 2. The second sentence of the first paragraph is derived from the Commentary to current Md. Canon 2B and has been retained to make clear that membership in an organization would not be prohibitive unless that membership would reasonably give rise to a perception of partiality. Certain organizations - such as congregational brotherhoods, sisterhoods, bowling leagues, etc. - may well be restricted to persons~~

~~belonging to the particular congregation and therefore to those sharing a particular religious belief, but it is hardly likely that membership in such an organization would cause people reasonably to believe that the judge is partial.~~

## CANON 3

### ~~Impartial and Diligent~~ Performance of Judicial Duties

In the performance of judicial duties, the following standards apply~~+~~.

#### A. GENERAL RESPONSIBILITIES.

A judge shall perform the duties of judicial office diligently, **impartially**, and without having or manifesting bias or prejudice, including bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status.

#### COMMENT

A judge must perform judicial duties fairly and **impartially**. A judge who manifests bias of any kind in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial. For example, a judge must refrain from comment, gesture, or other conduct that could reasonably be perceived as sexual harassment.

#### ~~A.~~ B. ADJUDICATIVE RESPONSIBILITIES.

(1) A judge ~~should~~ shall be faithful to the law and maintain professional competence in it.

(2) A judge ~~should be unswayed~~ shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge ~~should maintain~~ shall **require** order and decorum

in proceedings before the judge.

(4) A judge shall be dignified.

~~(4) (5) A judge should be~~ shall be courteous to and patient,  
~~dignified, and courteous to litigants, jurors, witnesses,~~  
~~lawyers, with jurors, lawyers, litigants, witnesses, and others~~  
with whom the judge deals in an official capacity and ~~should~~  
shall require similar conduct of lawyers, and of ~~staff,~~ court  
officials, staff, and others subject to the judge's direction and  
control.

#### COMMENT

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be businesslike and efficient while being deliberate and patient.

~~(5) (6) (a) A judge should~~ shall accord to every person who  
~~is legally interested in proceedings, has a legal interest in a~~  
~~proceeding pending before the judge, or the that~~ that person's lawyer,  
~~full the~~ the right to be heard according to law, ~~and, except as~~  
~~authorized by law,~~

(b) While presiding over a proceeding, a judge shall  
neither initiate nor, permit, or consider ex parte or other  
communications nor consider other communications made to the  
judge outside the presence of the parties concerning a pending or  
impending proceeding, except as otherwise provided in Canon 3B  
(6). ~~A judge, however, may obtain the advice of a disinterested~~  
~~expert on the law applicable to a proceeding before the judge if~~

~~the judge gives notice to the parties of the name of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.~~

(c) Ex parte communications that relate to scheduling or other administrative purposes or emergencies and not to substantive matters or issues on the merits are authorized, if: (i) circumstances require; (ii) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the communication; (iii) the judge makes provision promptly to notify all other parties as to the substance of the ex parte communication; and (iv) the judge affords the parties reasonable opportunity to respond.

(d) With the consent of the parties, a judge may confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding if the judge: (i) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice; and (ii) affords the parties reasonable opportunity to respond.

(f) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities and with other judges.

(g) A judge may initiate or consider an ex parte communication when expressly authorized by law to do so.

## COMMENT

The ~~proscription prohibition~~ against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. ~~It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.~~

To the extent practicable, all parties or their lawyers must be included in communications with a judge.

Whenever Canon 3B (6) requires the presence of, or notice to, a party, it is the party's lawyer or, if the party is unrepresented, the party who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

Canon 3B (6) allows for limited *ex parte* communication to facilitate scheduling and other administrative purposes and to accommodate emergencies. Even then, however, a judge must discourage *ex parte* communication and allow it only if all of the criteria stated in Canon 3B (6) clearly are met. A judge must disclose to all parties all *ex parte* communication described in Canon 3B (6)(c) and (e) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented, except matters of which the court properly can take judicial notice.

A judge may request a party to submit proposed findings of fact and conclusions of law if all of the other parties are apprised of the request and given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Canon 3B (6) is not violated through law clerks or other personnel on the judge's staff.

If communication between a trial judge and appellate court with respect to a proceeding is permitted, a copy of all written communications and the substance of all oral communications should be provided to all parties.

(6) (7) A judge ~~should~~ shall dispose ~~promptly~~ of the business of the court efficiently, fairly, and promptly.

COMMENT

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, and litigants and their lawyers cooperate to that end.

(7) (8) A judge ~~should~~ shall abstain from public comment ~~about a~~ that relates to a proceeding pending or impending proceeding in any court, ~~and should~~ that might reasonably be expected to affect the outcome of that proceeding or to impair the fairness of that proceeding and shall **require** similar abstention on the part of court personnel subject to the judge's direction and control. ~~This subsection~~ Canon 3B (8) does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.

COMMENT

"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers in this regard is governed by Rule 3.6 of the Maryland [Lawyers'] Rules of Professional Conduct.

(9) With respect to a case, controversy, or issue that is likely to come before the court, a judge shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office.

COMMENT

Canon 3B (8) and (9) restrictions on a judge's speech are essential to the maintenance of the **impartiality**, independence, and integrity of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that a judge abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition.

~~(8) (10)~~ At the conclusion of a jury trial, the judge ~~should neither shall not communicate to the jury the judge's praise nor criticize or criticism of~~ the verdict but may thank the jurors for their public service.

COMMENT

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and **impartial** in a subsequent case.

~~(9) (11)~~ A judge shall ~~perform judicial duties without require~~ lawyers in proceedings before the judge to refrain from manifesting, by word or conduct, bias or prejudice. ~~A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. based upon age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. Canon 3B (11) does not preclude legitimate advocacy when such status or other~~

similar factor is an issue in a proceeding.

#### COMMENT

~~A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.~~

~~A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.~~

~~(10) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B (10) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.~~

(12) Unless recusal is appropriate, a judge shall hear and decide matters assigned to the judge.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records) and Code, Tax-General Article, §13-1018 (tax information).

~~Committee note.--Secs. 3 A (1) and (2) are derived from ABA Canon 3 A (1) and current Md. Canon XIV.~~

~~Sec. 3 A (3) is derived from ABA Canon 3 A (2) and current Md. Canon XV.~~

~~Sec. 3 A (4) is derived from ABA Canon 3 A (3) and current Md. Canons IX and X.~~

~~Sec. 3 A (5) is derived from ABA Canon 3 A (4) and current Md. Canon XVI.~~

~~The Commentary to sec. 3 A (5) is derived from the Commentary to ABA Canon 3 A (4) and the Committee note to current Md. Canon XVI.~~

~~Sec. 3 A (6) is derived from ABA Canon 3 A (5) and current Md. Canon VII.~~

~~The Commentary to sec. 3 A (6) is derived from the Commentary to ABA Canon 3 A (5) and from current Md. Canon VII. Sec. 3 A (7) is derived from ABA Canon 3 A (6) and current Md. Ethics Rule 12.~~

~~The Commentary to sec. 3 A (7) is derived from the Commentary to ABA Canon 3 A (6).~~

~~Sec. 3 A (8) is derived from current Md. Ethics Rule 13. There is no ABA provision on this subject.~~

~~ABA Canon 3 A (7), current Md. Canon XXXIV, and current Md. Ethics Rule 11 contain provisions governing broadcasting, televising, recording or photographing in courtrooms and adjacent areas. Several states have deleted that provision on the ground that it addresses a question of court administration rather than ethics. The Committee agrees, especially since Rule 16-109 of the Md. Rules of Procedure governs media coverage of civil actions, and Md. Code, Criminal Procedure Article, §1-201 prohibits (with limited exceptions) media coverage of criminal trials.~~

~~Sec. 3A(9) and the Commentary to Sec. 3A(9) are derived from ABA Canon 3B(5) and the Commentary to the Canon of the 1990 ABA Code of Judicial Conduct.~~

~~Section 3A(10) is derived from ABA Canon 3B(6) of the 1990 Code.~~

~~Section 3A(9) and 3A(10) were added to emphasize the requirements of impartial decision-making and the appearance of~~

~~fairness in the courtroom.~~

B. C. ADMINISTRATIVE RESPONSIBILITIES.

(1) A judge shall ~~diligently~~ discharge the judge's administrative responsibilities without ~~bias or prejudice~~ and maintain professional competence in judicial administration, and ~~should~~ favoritism or nepotism and shall cooperate with other judges and court officials in the administration of court business.

COMMENT

~~Former Section 3B (1) was revised to prohibit a judge from manifesting bias or prejudice in the performance of administrative duties and to encourage, rather than to require, the more practicable duty of cooperation rather than facilitation.~~

(2) A judge shall **require** ~~staff,~~ court officials, staff, and others subject to the judge's direction and control to observe the standards of diligence and fidelity ~~and diligence~~ that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

COMMENT

~~Former Section 3B (2) was revised to add the requirement that a judge exercise reasonable direction and control over judicial personnel to assure that they do not manifest bias or prejudice in the performance of their official duties.~~

(3) ~~A judge should take or initiate appropriate corrective measures against a judge or lawyer for unprofessional conduct of which the judge may be aware.~~ A judge with supervisory authority

for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before those judges and the proper performance of their other judicial responsibilities.

COMMENT

~~Corrective measures may include a private admonition or reporting misconduct to the appropriate disciplinary body or a bar association counseling program.~~

~~(4) In exercising a power of appointment, a judge should appoint only qualified persons and should avoid nepotism and favoritism. No unnecessary appointments should be made. A judge should not approve compensation of appointees beyond the fair value of services rendered. A judge shall not make unnecessary appointments and shall not approve compensation of appointees beyond the fair value of services rendered.~~

COMMENT

Consent by the parties to an appointment or an award of compensation does not relieve ~~the~~ a judge of the obligation prescribed by ~~this section~~ Canon 3C (4).

~~Committee note.--Sec. 3B (1) is derived from ABA Canon [3B (1)] C(1) of the 1990 Code of Judicial Conduct and current Md. Canon VIII.~~

~~Sec. 3B (2) is derived from ABA Canon [3B (2)] 3C(2) of the 1990 Code of Judicial Conduct and current Md. Canon VIII.~~

~~The Commentary to Sections 3B (1) and (2) is derived from the Commentary to ABA Canons 3C (1) and (2) of the 1990 Code of Judicial Conduct.~~

~~Sec. 3B (3) is derived from ABA Canon 3B (3) and current Md. Canon XI, except that those provisions require the judge to take~~

~~appropriate "disciplinary" measures. The Committee believes that there may be instances of professional misconduct which would warrant a private admonition or referral to a bar association counseling service, actions which are less drastic than "disciplinary" measures. Requiring a judge to take "corrective" measures, therefore, gives the judge a wider range of options to deal with unprofessional conduct.~~

~~The Commentary to sec. 3B (3) is derived from the Commentary to ABA Canon 3B (3), but is modified in accordance with the Committee's changes to ABA Canon 3B (3).~~

~~Sec. 3B (4) is derived from ABA Canon 3B (4) and current Md. Canon XII.~~

~~The Commentary to sec. 3B (4) is derived from the Commentary to ABA Canon 3B (4) and from current Md. Canon XII.~~

~~E. D. RECUSAL.~~

~~(1) A judge ~~should not participate in a~~ shall recuse himself or herself from a proceeding in which the judge's **impartiality** might reasonably be questioned, including ~~but not limited to~~ instances where an instance when:~~

~~(a) the judge has a personal bias or prejudice concerning a party, ~~or personal~~ or a party's lawyer or extra-judicial **knowledge** of a disputed evidentiary ~~facts~~ fact concerning the proceeding;~~

~~(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge ~~or lawyer~~ has been a material witness concerning it;~~

COMMENT

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of ~~this subsection~~ Canon 3D (1)(b); a judge formerly employed by a governmental agency, however, should not participate in a proceeding if the judge's **impartiality** might reasonably be questioned because of such association.

(c) the judge **knows** that he or she, individually or as a **fiduciary**, or ~~the judge's spouse or minor child of the judge residing in the judge's household~~ a member of the judge's family, has a **significant financial interest** in the subject matter in controversy or in a party to the proceeding, ~~or any other interest that could be substantially affected by the outcome of the proceeding;~~

COMMENT

~~As a minimum standard for determining what constitutes a "significant financial interest," the judge should apply the definition of "financial interest" provided in the Maryland Public Ethics Law, Md. Code, State Government Article, § 15-102 (n) (1995 Replacement Volume and 1998 Supplement): "(1) Ownership of an interest as the result of which the owner has received within the past 3 years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year; or (2) (i) ownership of more than 3% of a business entity; or (ii) ownership of securities of any kind that represent, or are convertible into, ownership of more than 3% of a business entity."~~

~~Moreover, there may be situations involving a lesser financial interest which also require recusal because of the judge's own sense of propriety. Conversely, there are situations where participation may be appropriate even though the "financial interest" threshold is present. In the latter case, the judge must first obtain an opinion from the Judicial Ethics Committee to obtain an exemption, except as provided in Canon 3 D (Non-recusal by Agreement). There may be situations that involve a lesser financial interest but nonetheless require recusal because of the judge's own sense of propriety. Conversely, there are situations where participation may be appropriate even though the "financial interest" threshold is~~

present. In the latter case, a judge first must obtain an opinion from the Judicial Ethics Committee with regard to the appropriateness, except as provided in Canon 3E (Non-recusal by Agreement).

(d) the judge, ~~the spouse of the judge~~ the judge's spouse, a person an individual within the **third degree of relationship** to either of them, or the spouse of such ~~a person an individual~~ individual:

(i) is a party to the proceeding, ~~or is known by the judge to be an officer, director, or a director, officer,~~ or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

#### COMMENT

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of a judge is affiliated does not of itself require recusal of the judge. Under appropriate circumstances, the fact that "the judge's **impartiality** might reasonably be questioned" under Canon 3E 3D (1), or that the lawyer-relative is **known** by the judge to have an interest in the law firm that could be "substantially affected by the ~~outcome of the~~ proceeding" under Canon 3E 3D (1)(d)(iii), may require the judge's recusal.

(iii) is **known** by the judge to have ~~an interest a~~ **significant financial interest** that could be substantially affected by the ~~outcome of the~~ proceeding; or

(iv) is to the judge's **knowledge** likely to be a material witness in the proceeding; or

(e) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or

appears to commit, the judge with respect to:

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

(2) A judge ~~should~~ shall keep informed about ~~his or her~~ the judge's personal and **fiduciary** financial interests, and shall make a reasonable effort to keep informed about the personal financial interests of ~~the judge's spouse and minor children residing in~~ each member of the judge's household.

~~(3) For the purposes of this section:~~

~~(a) the degree of relationship is calculated according to the civil law system;~~

#### COMMENT

~~The following persons are within three degrees of relationship according to the civil law system: parent, grandparent, sibling, child, grandchild, uncle, aunt, niece, and nephew.~~

~~(b) "fiduciary" includes such relationships as personal representative, executor, administrator, trustee, custodian, attorney in fact by power of attorney, and guardian;~~

~~(c) "financial interest" means ownership of a legal or equitable interest, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:~~

~~(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;~~

~~(ii) an office in an educational, religious, charitable,~~

~~fraternal, or civic organization is not a "financial interest" in securities held by the organization;~~

~~(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the interest;~~

~~(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.~~

~~Committee note.--Sec. 3C (1)(a) is derived from ABA Canon 3C (1) (a).~~

~~Sec. 3C (1)(b) is derived from ABA Canon 3C (1)(b). Current Md. Ethics Rule 2 requires recusal in any matter in which the judge previously acted as a lawyer. Sec. 3C (1)(b) extends the recusal requirement to any matter in which the judge's former partner or associate acted while the judge was in practice.~~

~~The Commentary to sec. 3C (1)(b) is derived from the Commentary to ABA Canon 3C (1)(b) and is consistent with Md. Judicial Ethics Opinion No. 1 (issued 9/13/71).~~

~~Sec. 3C (1)(c) is derived from ABA Canon 3C (1)(c) and current Md. Ethics Rule 2. That ABA Canon requires recusal if any financial interest, "however small," is present; current Md. Ethics Rule 2 mandates recusal if a judge has a "significant" financial interest in the matter, which means a value in excess of \$1,000. See Md. Judicial Ethics Opinion No. 78 (issued 10/29/80). The Committee believes that de minimis financial interests should not automatically require recusal. As a result, the Committee favors the use of the definition of "financial interest" provided in the Maryland Public Ethics Law. Accordingly, this standard is set forth in the Commentary to sec. 3C (1)(c).~~

~~The first sentence of the last paragraph of the Commentary to sec. 3C (1)(c) is derived from the Committee note to current Md. Ethics Rule 2. The last two sentences of this Commentary are new and allow some flexibility to mandatory recusal even where the financial interest threshold exists. Such exemptions can be~~

~~determined by the Committee on an ad hoc basis.~~

~~The first clause of sec. 3C (1)(d)(i) is derived from ABA Canon 3C (1)(d)(i), current Md. Canon XIII, and current Md. Ethics Rule 2. The second clause is derived from the same ABA Canon, which does not, however, require knowledge by the judge of the relative's position. The Committee believes that such knowledge should be actual, not imputed.~~

~~Sec. 3C (1)(d)(ii) is derived from ABA Canon 3C (1)(d)(ii).~~

~~The Commentary to sec. 3C (1)(d)(ii) is derived from ABA Canon 3C (1)(d)(ii) and is consistent with Md. Judicial Ethics Opinion No. 53 (issued 6/16/77) and No. 25 (issued 12/26/74).~~

~~Sec. 3C (1)(d)(iii) is derived from ABA Canon 3C (1)(d)(iii).~~

~~Sec. 3C (1)(d)(iv) is derived from ABA Canon 3C (1)(d)(iv).~~

~~Sec. 3C (2) is derived from ABA Canon 3C (2) and current Md. Canon XXV.~~

~~Sec. 3C (3)(a) is derived from ABA Canon 3C (3)(a). Current Md. Ethics Rule 2 uses the common law system, which counts down from the common ancestor, a method which would extend the disqualification where the judge's first cousins are involved. Thirty-seven states have adopted the ABA Code provision, as does Md. Code, sec. 1-203 of the Estates and Trusts Article for purposes of estate distribution and administration. The Commentary to sec. 3C (3)(a) is derived from the Commentary to ABA Canon 3C (3)(a).~~

~~Sec. 3C (3)(b) is derived from ABA Canon 3C (3)(b).~~

~~Sec. 3C (3)(c) is derived from ABA Canon 3C (3)(c), but is modified as explained in the Committee note to sec. 3C (1)(c).~~

~~Sec. 3C (3)(c)(i) is derived from ABA Canon 3C (1)(c)(i). This provision would, superficially at least, negate Md. Judicial Ethics Opinion No. 81 (issued 11/20/80). That opinion required recusal because the judge had invested in an unusual type of mutual fund, where the investments were unchanging and the judge knew of each company in which the fund had invested. Under those particular facts, however, the judge's recusal would still be required under Canon 3C (1)(c) ("an interest that could be substantially affected by the outcome of the proceeding") or under the broad test of Canon 3 C (1) (where the judge's "impartiality might reasonably be questioned").~~

~~Secs. 3C (3)(c)(ii), (iii) and (iv) are derived from ABA Canon 3C (3)(ii), (iii), and (iv), respectively.~~

#### COMMENT

Under Canon 3D (1), a judge must recuse himself or herself whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific instances in Canon 3D (1) apply.

A judge must disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of recusal, even if the judge believes that there is no real basis for recusal.

By decisional law, the rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, the judge must disclose on the record the basis for possible recusal and, if practicable, use reasonable efforts to transfer the matter promptly to another judge.

#### ~~D.~~ E. NON-RECUSAL BY AGREEMENT.

~~Where~~ If recusal would be required by Canon ~~3C (1)(c) or Canon 3C (1)(d)~~ 3D, the judge may disclose on the record the basis of reason for the recusal. ~~If the lawyers, after consultation with their clients and independently of the judge's participation, all agree on the record that the judge ought to participate notwithstanding the basis for recusal, the judge may participate in the proceeding.~~ If after disclosure of any reason for recusal other than as required by Canon 3D (1)(a), the parties and lawyers, out of the presence of the judge, all agree that the judge need not recuse himself or herself, and the judge

is willing to participate, the agreement of the parties shall be incorporated in the record, and the judge may participate in the proceeding.

#### COMMENT

~~This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. A pro se party may agree to allow participation by the judge. This procedure gives the parties an opportunity to waive the recusal if the judge agrees. The judge may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the judge. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign a waiver agreement.~~

~~Committee note.--Sec. 3D and the Commentary thereto are derived from ABA Canon 3D and the Commentary thereto; however, those provisions require written approval of the parties. Because a party may not be readily available to sign, the Committee believes that the lawyer's agreement, after consultation with the client, should suffice. Non-recusal by agreement is not permitted under current Md. Ethics Rule 2, as interpreted by Md. Judicial Ethics Opinion No. 78 (issued 10/29/80) and No. 50 (issued 1/17/77).~~

#### F. DISCIPLINARY RESPONSIBILITIES.

(1) A judge should take or initiate appropriate corrective measures with respect to the unprofessional conduct of another judge or a lawyer.

(2) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Commission on Judicial Disabilities of facts **known** to that judge that raise a substantial question as to another judge's fitness for office.

(3) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Attorney Grievance Commission of facts **known** to the judge that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(4) Acts of a judge required or permitted by Canon 3F (1), (2), or (3) shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

#### COMMENT

Permitting a judge to take "corrective" measures gives the judge a wide range of options to deal with unprofessional conduct. Appropriate corrective measures may include direct communication with the judge or lawyer who is believed to have committed the violation or other direct action if available. There may be instances of professional misconduct that would warrant a private admonition or referral to a bar association counseling service.

CANON 4

Extra-Judicial Activities

A. EXTRA-JUDICIAL ACTIVITIES IN GENERAL.

~~Except as otherwise prohibited or limited by law or these canons, a judge may engage in the following activities, if doing so does not interfere with the proper performance of judicial duties, does not reflect adversely upon the judge's impartiality, and does not detract from the dignity of the office.~~

~~Committee note.--This Canon combines ABA Canons 4 (Quasi-judicial Activities) and 5 (Extra-judicial Activities) and 6 A and B (Compensation and Expense Reimbursement) and is consistent with the ABA Code, unless specifically noted otherwise.~~

A judge shall conduct all extra-judicial activities so that they do not:

- (1) cause a substantial question as to the judge's capacity to act **impartially** as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

COMMENT

Complete separation of a judge from extra-judicial activities is neither possible nor desirable. A judge should not become isolated from the judge's community.

An extra-judicial activity, however, may be perceived to reflect on judicial behavior. For example, an expression of bias or prejudice by a judge, even outside the judge's judicial activities, may cause a substantial question as to the judge's capacity to act **impartially** as a judge. Expressions that may do so include jokes or other remarks demeaning individuals on the

basis of their age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. See Canon 2C and the accompanying Comment.

A. B. AVOCATIONAL ACTIVITIES.

Subject to other provisions of this Code, A a judge may lecture, speak, teach, write, lecture, and teach and on both legal and non-legal subjects. A judge may participate in other activities concerning the law, the legal system and the administration of justice. A judge may engage in social and recreational activities. otherwise participate in other extra-judicial activities concerning the administration of justice, the legal system, improvement of the law, and non-legal matters.

COMMENT

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the society in which he or she may live. A judge is in a unique position to contribute to the administration of justice, the legal system, and improvement of the law, including the revision of substantive and procedural law and improvement of criminal and juvenile justice. As time may permit, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

The phrase "subject to other provisions of this Code" is used in this and other sections of Canon 4, primarily in connection with a judge's charitable, civic, or governmental activities, to remind judges that use of permissive language in various sections of this Code does not relieve a judge from the other provisions of this Code that apply to the specific conduct.

Committee note.--Sec. 4 A is derived from ABA Canons 4A and 5A and current Md. Canon XXX.

The Commentary to sec. 4A is derived from the Commentary to ABA Canon 5A and from current Md. Canon XXXII.

Alternative A - Rules Committee's Version

Committee note: The Judicial Ethics Committee has cautioned that a judge who agrees to speak at a political club should schedule the speech so as not to be present for political discussions, be reasonably available to other groups with similar invitations, and not speak at fund-raising events.

Alternative B - Judicial Ethics Committee's Version

Committee note: The Judicial Ethics Committee has cautioned judges to schedule a speech at a political club so as not to be present for political discussions, to be reasonably available to other groups with similar invitations, not to lecture to probationers who might be brought back before the court, and not to speak at fund-raising events.

The Judicial Ethics Committee has held that writing an introduction for a book was not using the judicial office for a private business.

B. C. GOVERNMENT CHARITABLE, CIVIC, AND GOVERNMENTAL ACTIVITIES.

(1) A judge may appear before and confer with public bodies or officials on matters concerning the judiciary or the administration of justice. Except when acting pro se in a matter that involves the judge or the judge's interests, when acting as to a matter that concerns the administration of justice, the legal system, or improvement of the law, or when acting as otherwise allowed under Canon 4, a judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official.

COMMENT

As suggested in the *Reporter's Notes to the ABA Model Code of Judicial Conduct (1990)*, the "administration of justice" is not limited to "matters of judicial administration" but is broad enough to include other matters relating to the judiciary.

~~(2) A judge may serve on governmental advisory bodies devoted to the improvement of the law, the legal system or the administration of justice and may represent his or her country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities.~~

**Alternative A - Rules Committee's Version**

**(2) Except as otherwise provided by law and subject to Canon 4A, a judge may accept appointment to a governmental commission, committee, or position.**

**Alternative B - Judicial Ethics Committee's Version**

**(2) Except as otherwise provided by law and subject to Canon 4A, a judge may accept appointment to a governmental advisory commission, committee, or position.**

COMMENT

~~Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial time created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary. Nor can a judge assume or discharge the legislative or executive powers of~~

~~government (Article 8 of the Md. Declaration of Rights) or hold an "office" under the constitution or laws of the United States or State of Maryland (Article 33 of the Md. Declaration of Rights). A judge may not accept a governmental appointment that could interfere with the effectiveness and independence of the judiciary, assume or discharge an executive or legislative power (Maryland Declaration of Rights, Article 8), or hold an "office" under the constitution or other laws of the United States or State of Maryland (Maryland Declaration of Rights, Articles 33 and 35).~~

Committee note: The Judicial Ethics Committee notes that the supremacy clause of U.S. Constitution Article IV may allow service in reserve components of the armed forces that otherwise might be precluded under this Code, such as service as a judge advocate or military judge. However, the Attorney General, rather than the Judicial Ethics Committee, traditionally has rendered opinions with regard to issues of dual or incompatible offices.

~~(3) As a private citizen, a judge may appear before or confer with public bodies or officials on matters that directly relate to a judge's person, immediate family or property so long as the judge does not use, and avoids the appearance of using, the prestige of the judge's office to influence decision-making.~~

~~Committee note.--Sec. 4 B (1) is derived from ABA Canon 4 B, which provides as follows:~~

~~[A judge] may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.~~

~~The Committee believes that the phrase "matters concerning the law" is overly broad, and that a judge's participation, as a judge, before public bodies or officials should be limited to matters involving the judiciary or administration of justice. Current Md. Canon XXII allows a judge's participation in executive and legislative matters to "improve the administration of justice."~~

~~The Commentary to sec. 4 B (1) is from the stated source. Sec. 4 B (2) is derived from ABA Canon 5 G. Current Md. Ethics Rule 3 and Article 33 of the Md. Declaration of Rights prohibit a judge from holding any "office," civil, military or political, under the constitution or laws of the United States or State of Maryland. An "office" is one which calls for the exercise of some portion of the sovereign power of government. See, e.g., *Howard County Comm. v. Westphal*, 232 Md. 334, 340 (1963) and Judicial Ethics Opinion No. 77 (issued 9/14/79) and No. 97 (issued 4/21/82). Service on a government "advisory" commission would not be prohibited. See Judicial Ethics Opinion No. 75 (issued 9/13/79) and No. 90 (11/28/80) and Unreported Opinion No. 82-16 (issued 9/7/82), No. 81-3 (issued 4/1/81) and No. 80-1 (issued 6/13/80).~~

~~The Commentary to sec. 4 B (2) is derived from the Commentary to ABA Canon 5 G, except that the last sentence thereof is added to reflect the provisions of Articles 8 and 33 of the Md. Declaration of Rights.~~

~~Sec. 4 B (3) appears to be prohibited by ABA Canon 4 B. However, within proper bounds and with appropriate restraint, such conduct has been permitted by Maryland judges in their personal affairs. See Judicial Ethics Opinion No. 99 (issued 7/12/82) and *In Re Foster*, 271 Md. 449 (1974).~~

#### ~~C. CIVIC AND CHARITABLE ACTIVITIES.~~

~~A judge may participate and serve as a member, officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, law-related or civic organization not conducted for the economic or political advantage of its members, subject to the following provisions:~~

~~(1) A judge should not participate and serve if it is likely that the organization: (a) will be engaged in proceedings that would ordinarily come before the judge; (b) will be regularly engaged in adversary proceedings in any court; or (c) deals with people who are referred to the organization by the court on which the~~

~~judge serves or who otherwise may likely come before that court.~~

#### COMMENT

~~The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which a judge is affiliated to determine if it is proper to continue a relationship with it. For example, in many jurisdictions charitable organizations are now more frequently in court than in the past or make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.~~

~~As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and the improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law.~~

~~(2) A judge should not solicit funds for any such organization, or use or permit the use of the prestige of the judge's office for that purpose, but a judge may be listed as an officer, director, or trustee of the organization. A judge may make recommendations to public and private fund granting agencies on projects and programs of which the judge has personal knowledge and which concern the law, the legal system, or the administration of justice. A judge should not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events.~~

~~Committee note.--The first paragraph of sec. C is derived from ABA Canons 4 C and 5 B, current Md. Ethics Rule 9 and the Committee note to current Md. Ethics Rule 9.~~

~~Secs. 4 C (1) (a) and (b) are derived from ABA Canon 5 B (1).~~

~~Sec. 4 C (1) (c) is derived from a series of rulings by the Md. Judicial Ethics Committee. See Opinion No. 6 (issued 3/1/72), No. 35 (issued 10/3/75), and No. 75 (issued 9/13/79) and Unreported Opinion No. 81-15 (issued 2/16/82) and No. 82-7 (issued 4/26/82).~~

~~The first paragraph of the Commentary to sec. 4 C (1) is derived from the Commentary to ABA Canon 5 B.~~

~~The second paragraph of the Commentary to sec. 4 C (1) is derived from the Commentary to ABA Canon 4 C.~~

~~Sec. 4 C (2) is derived from ABA Canon 5 B (2), ABA Canon 4 C, current Md. Canon XXIV, current Md. Ethics Rule 9 and is consistent with numerous opinions issued by the Judicial Ethics Committee, with one exception: Judicial Ethics Opinion No. 6 (issued 3/1/72) and No. 59 (issued 11/30/77) require that the name of the judge be omitted as an officer or director in any campaign literature for that organization. ABA Canon 4 C permits a judge to assist in fund raising for a law-related organization, provided the judge does not personally participate in "public" fund raising activities. The Committee believes that the dangers inherent in a judge's participation in civic and charitable fund raising are equally applicable to fund raising, public or private, for law-related organizations. Notwithstanding these prohibitions, the judge may still participate in "purely internal discussions and decisions within the confines of the governing board" relating to fund raising activities. Judicial Ethics Opinion No. 89 (issued 11/25/80).~~

~~ABA Canon 5 B (3) provides that a judge should not give investment advice to a non-profit organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions. The ABA rationale for this prohibition is to avoid attributing to the judge a fiduciary's interest in the organization's investment portfolio, which could result in the judge's recusal in a case involving such investments. This provision is unnecessary, since proposed Maryland Canon 3 C (3) (c) (ii) provides that a judge's office in a non-profit organization is not a "financial interest" in securities held by the organization. Moreover, there are many other types of decisions that a judge would make as a board member which would require recusal in a particular matter, but which are not specifically dealt with in these canons.~~

(3) A judge may represent this country, a state, or a locality on ceremonial occasions or in connection with cultural,

educational, or historical activities.

(4) (a) Subject to other provisions of this Code, a judge may be a director, member, non-legal adviser, officer, or trustee of a charitable, civic, educational, fraternal or sororal, law-related, or religious organization.

COMMENT

See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code." As an example of the meaning of the phrase, a judge permitted under Canon 4C (4) to serve on the board of an organization may be prohibited from such service by, for example, Canon 2C or 4A, if the organization practices invidious discrimination or if service on the board otherwise causes a substantial question as to the judge's capacity to act **impartially** as a judge or as to service as a legal adviser.

(b) A judge shall not be a director, member, non-legal adviser, officer, or trustee of an organization that is conducted for the economic or political advantage of its members.

(c) A judge shall not be a director, member, non-legal adviser, officer, or trustee of an organization if it is likely that the organization:

(i) will be engaged regularly in adversary proceedings in any court; or

(ii) deals with people who are referred to the organization by any court.

COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine whether it is proper to continue

a relationship with it. For example, in many jurisdictions, charitable organizations are more frequently in court now than in the past or make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(d) (i) A judge shall not participate personally in:

(A) solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise appellate or supervisory jurisdiction; or

(B) a membership solicitation that reasonably might be perceived as coercive or, except as permitted in Canon 4C (4)(d)(i)(A), is essentially a fund-raising mechanism.

(ii) A judge shall not participate as a guest of honor or speaker at a fund-raising event.

(iii) Except as allowed by Canon 4C (4)(d), a judge shall not use or lend the prestige of judicial office for fund-raising or membership solicitation.

(iv) A judge may:

(A) assist an organization in planning fund-raising;

(B) participate in the investment and management of an organization's funds; and

(C) make recommendations to private and public fund-granting organizations on programs and projects concerning the administration of justice, the legal system, or improvement of the law.

## COMMENT

As a director, member, non-legal adviser, officer, or trustee of an organization that is devoted to the administration of justice, the legal system, or improvement of the law or for a not-for-profit charitable, civic, educational, fraternal or sororal, or religious organization, a judge may solicit membership and encourage or endorse membership efforts for the organization, as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor who is in a position of control or influence. A judge may be listed as a director, officer, or trustee of an organization but must not engage in direct, individual solicitation of funds or memberships in person, by telephone, or in writing, for that organization, except in the following cases: (1) a judge may solicit, for funds or memberships, other judges over whom the judge does not exercise appellate or supervisory authority; (2) a judge may solicit, for membership in an organization described above, other persons if neither those persons nor persons with whom they are affiliated are likely to appear before the court on which the judge serves; and (3) a judge who is an officer of an organization described above may send a general membership solicitation mailing over the judge's signature.

Use of an organization's letterhead for fund-raising or membership solicitation does not violate Canon 4C (4) if the letterhead lists only the judge's name and office or other position in the organization. A judge's judicial office also may be listed if comparable information is listed for other individuals. A judge must make reasonable efforts to ensure that court officials, the judge's staff, and others subject to the judge's direction and control do not use or refer to their relationship with the judge to solicit funds for any purpose, charitable or otherwise.

Although a judge is not permitted to be a guest of honor or speaker at a fund-raising event, Canon 4 does not prohibit a judge from attending an event if otherwise consistent with this Code.

### D. FINANCIAL ACTIVITIES.

(1) A judge ~~should refrain from~~ shall not engage in business or financial and business dealings that: use the judge's position

or

(a) reasonably would be perceived to violate Canon 2B; or

(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

#### COMMENT

Canon 4D (1)(b) is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for recusal. A judge also should discourage **members of the judge's family** from engaging in dealings that reasonably would appear to exploit the judge's judicial position. With respect to affiliation of relatives of the judge with law firms appearing before the judge, see the Comment to Canon 3D (1)(d) relating to recusal.

Participation by a judge in business and financial dealings is subject to the general prohibitions in Canon 4A against activities that cause a substantial question as to **impartiality**, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation also is subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code."

(2) Subject to other provisions of this Code, A a judge may hold and manage investments, including real estate, and engage in other remunerative ~~activity~~ activities except that a full-time judge shall not hold ~~any office or~~ a directorship in ~~any or~~ office in a bank, insurance company, lending institution, public utility, ~~bank,~~ savings and loan association, ~~lending institution,~~ insurance company, or any other business corporation or,

enterprise, or venture ~~which~~ that is affected with a public interest.

(3) A judge ~~should~~ shall manage investments and other financial interests to minimize the number of cases in which recusal would be required. As soon as practicable without serious financial detriment, ~~the a~~ judge ~~should~~ shall dispose of ~~investments and other~~ those financial interests that might require frequent recusal.

(4) A judge shall neither use nor disclose, in financial dealings or for any other purpose not related to the judge's judicial duties, information that is acquired by a judge in his or her judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties and that is confidential, privileged, or otherwise not part of the public record.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records) and Code, Tax-General Article, §13-1018 (tax information).

~~Committee note.--Sec. 4 D (1) is derived from ABA Canon 5 C (1) and current Md. Canon XXV.~~

~~Sec. 4 D (2) is derived from ABA Canon 5 C (2) and current Md. Ethics Rule 6. However, ABA Canon 5 C (2) prohibits a judge from serving as an officer, director, manager, advisor, or employee of any business. Only 8 states have adopted that version without any change, and 7 states have adopted a slightly modified version. Sec. 4 D (2) continues the present practice provided in current Md. Ethics Rule 6 and has been substantially adopted in at least 15 states. At least 2 other states are more~~

~~permissive. Seven states only allow a judge to participate in a "family" business or "closely held business."~~

~~Sec. 4 D (3) is derived from ABA Canon 5 C (3) and current Md. Canon XXV.~~

~~Sec. 4 D (4) is derived from ABA Canon 5 C (7) and current Md. Canon XXV.~~

#### ~~E. COMPENSATION AND EXPENSE REIMBURSEMENT.~~

~~A judge may receive compensation and reimbursement of expenses for activities permitted by this Code, subject to the following restrictions:~~

~~(1) Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.~~

~~(2) Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation.~~

~~Committee note.--This is found in ABA Canon 6 A and 6 B but is placed here because it is related to the financial activities of a judge.~~

#### ~~F. GIFTS.~~

~~(1) A judge must be especially careful in accepting gifts, favors, and loans from persons not in the judge's immediate family. However innocently intended, gifts and favors from such persons, especially gifts and favors having substantial monetary value, may create an appearance that the judge could be~~

~~improperly beholden to the donor. Subject to this caveat, and except as otherwise prohibited or limited by law or these canons, a judge may accept:~~

~~(a) a gift incident to a public testimonial or books supplied by publishers on a complimentary basis for official use;~~

~~(b) ordinary social hospitality;~~

~~(c) a gift from a friend or relative by reason of some special occasion, such as a wedding, anniversary, birthday, and the like, if the gift is fairly commensurate with the nature of the occasion and the friendship or relationship;~~

~~(d) a gift, favor, or loan from a relative or close personal friend whose appearance before the judge or whose interest in a case would require a recusal under Canon 3 C;~~

~~(e) a scholarship or fellowship awarded on the same terms applied to other applicants;~~

~~(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges.~~

~~(2) The standards set forth in subsection (1) of this section also apply to gifts, favors, and loans offered to members of the judge's family who reside in the judge's household. For purposes of this Canon and absent extraordinary circumstances, gifts, favors and loans accepted by such family members shall be considered to be accepted by the judge.~~

COMMENT

~~This section relating to gifts does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.~~

~~Judges are often invited by lawyers or other persons to attend social, educational, or recreational functions. In most cases, such invitations would fall within the realm of ordinary social hospitality and may be accepted by the judge. If there is more than a token fee for admission to the function, however, unless the fee is waived by the organization, the judge should pay the fee and not permit a lawyer or other person to pay it on the judge's behalf.~~

~~Committee Note.--Sec. 4 F (1) is new language not found in either the ABA Code or the current Md. Canons.~~

~~Sec. 4 F (1) (a) is derived from ABA Canon 5 C (4) (a).~~

~~Sec. 4 F (1) (b) is derived from ABA Canon 5 C (4) (b).~~

~~Sec. 4 F (1) (c) is derived from ABA Canon 5 C (4) (b); but that provision allows a judge to receive a wedding or engagement gift from anyone, which the Committee believes is overly broad.~~

~~Sec. 4 F (1) (d) is derived from ABA Canon 5 C (4) (c), current Md. Canon XXXI, and current Md. Ethics Rule 7. Those ABA and Md. provisions allow a judge to receive any gift from any donor who is not a party or other person whose interests have come or are likely to come before the judge. The Committee believes these provisions are too permissive, since it is difficult to know if a person's interests will be submitted to the judge in the future, and since it is unseemly and perhaps suspicious for a judge to accept gifts for no apparent reason from persons with whom the judge has little or no connection or relationship. This provision allows a judge to receive any type of gift from relatives and close personal friends who could not appear before the judge.~~

~~Sec. 4 F (1) (e) is derived from ABA Canon 5 C (4) (b).~~

~~Sec. 4 F (1) (f) is derived from ABA Canon 5 C (4) (b).~~

~~Sec. 4 F (2) is derived from ABA Canon 5 C (4) (b), except that the phrase "absent extraordinary circumstances" has been added.~~

~~The first sentence of the Commentary following sec. 4 F (2) is derived from the Commentary to ABA Canon 5 C (4) and from~~

~~current Md. Ethics Rule 7. The remainder of that Commentary is new and provides guidance as to the scope of "ordinary social hospitality" as used in sec. 4 F (1) (b). It is consistent with Md. Judicial Ethics Opinion No. 91 (issued 3/2/81), which permits a judge to accept an invitation by a bar association to a bar association function which otherwise requires a paid ticket of admission; and Md. Judicial Ethics Opinion No. 102 (issued 3/21/84), which allows a judge to accept an invitation of an attorney to a bar association or other social function where an admission fee is not charged provided that "there is no reason to suspect that the attorney will attempt to use the judge's presence for any inappropriate purpose." ABA Canon 5 C (4) (a) allows a judge to accept an invitation from anyone to a bar-related function or activity even if the inviter pays the admission fee for the judges.~~

(5) A judge shall not accept, and shall urge **members of the judge's household** not to accept, a bequest, favor, **gift**, or loan from anyone except for:

(a) contributions to a judge's campaign for judicial office that comply with Canon 5;

(b) a book, tape, or other resource material supplied by a publisher on a complimentary basis for official use, a **gift** incident to a public testimonial, or an invitation to a judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the administration of justice, the legal system, or improvement of the law;

(c) an award, benefit, or **gift** incident to the business, profession, or other separate activity of a spouse or other **member of the judge's household**, including an award, benefit, or **gift** for the use of both the household member and judge (as spouse or family member), if the award, benefit, or **gift** could not reasonably be perceived as intended to influence the judge in

the performance of judicial duties;

(d) ordinary social hospitality;

(e) a **gift** from a friend or relative, for a special occasion, such as an anniversary, birthday, or wedding, if the **gift** is fairly commensurate with the occasion and the friendship or relationship;

(f) a bequest, favor, **gift**, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require a recusal under Canon 3D;

(g) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(h) a fellowship or scholarship awarded on the same terms and based on the same criteria applied to other applicants; or

(i) any other bequest, favor, **gift**, or loan if: (1) the donor or lender is not a person whose interests have come or are likely to come before the judge and (2) the judge reports, on the judge's financial disclosure form, all bequests, favors, **gifts**, and loans required under Rule 16-815 to be reported.

#### COMMENT

However innocently intended, favors or **gifts** from persons not in a judge's immediate family may create an appearance that the judge could be improperly beholden to the donor.

Similarly, a bequest, favor, **gift**, or loan to a **member of the judge's household** might be viewed as intended to influence the judge. Therefore, a judge must inform those household members of the relevant ethical constraints on the judge in this

regard and discourage those household members from violating the constraints. However, a judge cannot reasonably be expected to **know** or control all of the business and financial activities of all **members of the judge's household.**

Canon 4D (5)(b) and (i) governs, respectively, acceptance of an invitation to a law-related function and of an invitation paid for by an individual lawyer or group of lawyers.

A judge may accept a public testimonial, or a **gift** incident thereto, only if the donor is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial or **gift** complies with other provisions of this Code. See Canons 2B and 4A (1).

A **gift** that is made to a judge, or a **member of the judge's household**, and is excessive in value raises questions about the judge's **impartiality** and the integrity of the judicial office and might require recusal of the judge. See, however, Canon 4D (5)(f).

#### G. E. **FIDUCIARY ACTIVITIES.**

~~A judge should not serve as a fiduciary except in the following instances. A judge may serve as a personal representative (executor or administrator) or special administrator of the estate of a decedent, as a trustee of a trust, as a custodian, as a guardian, or as an attorney in fact but only where the judge is spouse, the surviving spouse or is related within the third degree (according to the civil law system) to the decedent, grantor, minor or disabled person. A judge actually serving as a trustee of a trust on December 31, 1969, may continue to serve even if not within the required degree of relationship. In extraordinary cases, a judge may serve as guardian or attorney in fact for any other person with~~

~~whom the judge maintains a close familial relationship, but only if there is no other person ready, willing and able to serve in that capacity. While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge personally.~~

(1) (a) Except as provided in Canon 4E (1) and then only subject to other provisions of this Code and statutes, a judge shall not serve as a **fiduciary**.

(b) A judge may serve as a **fiduciary** for a **member of the judge's family**.

(c) A judge who has served as a trustee of a trust since December 31, 1969, may continue to do so as allowed by law.

(2) A judge shall not agree to serve as a **fiduciary** if it is likely that, as a **fiduciary**, the judge will be engaged in proceedings that ordinarily would come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or in a court under the appellate jurisdiction of the court on which the judge serves.

(3) The restrictions that apply to personal financial activities of a judge also apply to the judge's **fiduciary** financial activities.

#### COMMENT

~~A judge's obligation under this canon and as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 4D (3). The Time for Compliance provision of this Code~~

(Canon 6D) postpones the time for compliance with certain provisions of Canon 4E in some cases.

Committee note: ~~Sec. 4 G is derived from ABA Canon 5 D, with substantial modifications. Secs. 5-105 (b) (5) and 14-104 of Md. Code Ann., Estates and Trusts Article, prohibit a judge from serving as a personal representative or trustee for someone who is not a spouse or related within the third degree (although a judge serving as trustee as of 12/31/69 is allowed to continue in that capacity). Maryland law and the existing Maryland canons do not prohibit a judge from serving as any other type of fiduciary for anyone. (Judicial Ethics Opinion No. 60 erroneously assumes that Maryland statutory law prohibits a judge from serving as a guardian of the property of a disabled person. But see Unreported Opinion Docket No. 82-10). ABA Canon 5 D allows a judge to serve as a fiduciary only for a "spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship." As can be seen, the ABA canon is more permissive than Maryland law as to personal representatives and trustees, but is more restrictive than Maryland law or existing Maryland canons as to other types of fiduciaries. The Committee believes that a judge's eligibility as a fiduciary should be very limited, because of the necessity or likelihood of the judge having to appear in court or be under court supervision as a representative of a party. The limitations imposed by the legislature as to personal representatives and trustees appeared to the Committee to be appropriate for guardians and custodians. The Committee recognizes the exceptional situation where the judge should be allowed to act as a guardian or attorney in fact for a disabled person who is not a near relative but with whom the judge has a close relationship, and no one else is willing to undertake that personal responsibility.~~

~~ABA Canon 5 D (1) provides that a judge "should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction." The Committee agrees that ordinarily a judge should not undertake a fiduciary position if adversary proceedings in the judge's court are likely to occur; however, the Committee believes that this ABA provision, which would require resignation whenever the estate or trust became involved in adversary proceedings, is too inflexible. —~~  
~~The Commentary to sec. 4 G is derived from the Commentary to ABA Canon 5 D.~~

Code, Estates and Trusts Article, §§5-105 (b)(5) and 14-104

prohibit a judge from serving as a personal representative or trustee for someone who is not a spouse or within the **third degree of relationship** (although a judge serving as trustee as of 12/31/69 is allowed to continue in that capacity). Neither the 1987 Maryland Code of Judicial Conduct nor any other Maryland law explicitly prohibits a judge from serving as any other type of **fiduciary** for anyone.

H. F. ARBITRATION SERVICE AS ARBITRATOR OR MEDIATOR.

A judge ~~should~~ shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

COMMENT

~~This Canon 4F does not preclude a judge from participating in settlement conferences. If by reason of disclosure made during or as a result of the a conference, the a judge's **impartiality** might reasonably be questioned, the judge should not further participate in the matter further. See Canon 3C-(1) 3D (1).~~

~~Sec. H is derived from ABA Canon 5 E. Current Md. Canon XXX allows a judge to act as an arbitrator or mediator pursuant to a contract in force on January 1, 1975. The Committee assumes that no such contract is still operative. If otherwise, the judge should make this known to the Committee.~~

~~Committee note.--The Commentary to sec. H is new.~~

~~H. G. PRACTICE OF LAW.~~

~~(1) (a) Except as provided in subsection (b), a judge should not practice law.~~

~~(b) A part-time judge of the Orphans' Court may practice law to the extent permitted by law, except that the judge shall avoid conduct whereby such judicial position is used or seems to~~

~~be used to further success in the practice of law; and in no event should the judge practice in the court in which the judge sits, even when presided over by another judge, nor appear therein pro se in any controversy.~~

~~(2) Prior to qualification for judicial office, a judge who intends to enter into an agreement under §1-203 (b) of the Md. Code Ann., Courts and Judicial Proceedings Article, for payments relating to the judge's former law practice should submit the agreement to the Judicial Ethics Committee so that the Committee may review it as to the reasonableness of the time provided for payments to be made under the agreement. A payment period limited to a maximum of five years or less is presumptively reasonable. A longer payment period is permitted only with the Committee's prior approval as to its reasonableness.~~

~~(3) An agreement entered into under §1-203 (b) of Md. Code Ann., Courts and Judicial Proceedings Article, may not be amended without the prior approval of the Judicial Ethics Committee.~~

~~(4) These subsections are applicable to any agreement entered into under §1-203 (b) of Md. Code Ann., Courts and Judicial Proceedings Article, on and after July 1, 1981.~~

(1) Except as allowed by Canon 4G, a judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se in a matter involving the judge or the judge's interest and, if without compensation, may give legal advice to and draft or review documents for a member of the judge's family.

(2) (a) To the extent expressly allowed by law and subject to other applicable provisions of this Code, a part-time judge of an orphans' court may practice law.

Cross reference: See Code, Estates and Trusts Article, §2-109 for restrictions on the practice of law by a part-time judge of an orphans' court.

(b) A judge of an orphans' court shall avoid conduct whereby the judge uses or seems to use the judicial office to further success in the practice of law.

(c) A judge of an orphans' court shall not practice, or appear as an individual in a matter involving the judge or the judge's interest, in the court on which the judge serves, even when another judge is presiding.

~~Committee note.--Sec. 4 I (a) is derived from ABA Canon 5 F and current Md. Canon XXX.~~

~~Sec. 4 I (b) is derived from paragraph A of the Compliance Section of the ABA Code and current Md. Canon XXX.~~

~~Secs. 4 I (2), (3), and (4) are derived from current Md. Ethics Rule 5A. a., b., and c., respectively.~~

#### COMMENT

Canon 4G (1) limits the practice of law in a representative capacity but not in a *pro se* capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office for any reason, including advancement of an interest of the judge or the judge's family. See Canons 2B and 4C (1).

This Code allows a judge to give legal advice to, and draft legal documents for, a **member of the judge's family**. However, except for a part-time orphans' court judge allowed to practice

law, a judge must not receive any compensation from, or act as an advocate or negotiator for, a member of the judge's family in a legal matter.

#### H. COMPENSATION AND REIMBURSEMENT.

Unless otherwise prohibited by law, a judge may receive compensation and reimbursement of expenses for extra-judicial activities permitted by this Code if:

(1) the source of compensation or reimbursement does not give the appearance of impropriety;

(2) the compensation does not exceed a reasonable amount and does not exceed the amount a person who is not a judge ordinarily would receive for the same activity; and

(3) the expense reimbursement is limited to the actual cost of food, lodging, and travel reasonably incurred by a judge and, if appropriate to the occasion, by the judge's spouse or guest.

#### COMMENT

Acceptance of an "honorarium", as defined in Code, State Government Article, §15-102 (r), is governed by Code, State Government Article, §15-505. See Judicial Ethics Opinion No. 128 (issued February 2, 2000).

A judge must disclose financial matters such as debts or income, investments, or other assets, only to the extent required by Canon 4H, by Canon 3D or E, or by law. See Code, State Government Article, §15-610.

CANON 5

Political Activity

A. POLITICAL CONDUCT OF JUDGE WHO IS NOT CANDIDATE.

(1) A judge who is not a candidate for election, ~~or re-election,~~ to or retention to in a judicial office ~~should shall~~ not engage in any partisan political activity ~~and should resign judicial office when becoming a candidate for a non-judicial office, except that the judge may continue to hold judicial office while a candidate for election to or serving as a delegate in a state constitutional convention.~~

(2) (a) Except as otherwise provided in Canon 5A (2)(b), a judge shall resign when the judge becomes a candidate for a non-judicial office.

(b) A judge may continue to hold judicial office while a candidate for election to, or delegate in, a Maryland constitutional convention.

Committee note: ~~ABA Canon 7A, current Md. Canon XXVII, and current Md. Ethics Rule 3 generally prohibit partisan political activity by a judge who is not a candidate for judicial office. The resignation requirement is found in ABA Canon 7A (3), current Md. Canon XXIX, and current Md. Ethics Rule 4. ABA Canon 7A (3) allows a judge to serve as a state constitutional convention delegate if allowed by law. Such a delegate is not an "office" which Article 33 of the Md. Declaration of Rights prohibits a judge from holding. *Board v. Attorney General*, 246 Md. 417 (1967). Canon 5A (2) of the Maryland Code of Judicial Conduct adopted by the American Bar Association in 2000 allows a judge to serve as a state constitutional convention delegate if allowed by law. Such a delegate does not hold an "office," which Maryland Declaration of Rights, Article 33 would prohibit a judge from holding. See *Board v. Attorney General*, 246 Md. 417 (1967).~~

B. POLITICAL CONDUCT OF A JUDGE WHO IS CANDIDATE.

(1) A judge who is a candidate for election, or re-election, to or retention to in a judicial office may engage in partisan political activity allowed by law with respect to such candidacy, except that the judge:

~~(1)~~ (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, independence, and integrity of the judiciary;

(b) ~~should~~ shall not act as a leader or hold any an office in a **political organization;**

~~(2)~~ (c) ~~should~~ shall not make ~~speeches~~ a speech for a candidate or political organization ~~or candidate~~ or publicly endorse a candidate for non-judicial office;

COMMENT

A judge does not publicly endorse a candidate for public office by having the judge's name on the same ticket.

~~(3)~~ (d) ~~should maintain the dignity appropriate to judicial office with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;~~

COMMENT

Canon 5B (1)(d) does not prohibit a candidate from making a commitment, pledge, or promise respecting improvements in court administration or the faithful and impartial performance of the duties of the office.

(e) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact; and

~~(4) (f) should shall not allow any other person to do for the judge what the judge is prohibited from doing.~~

~~(5) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office, announce the judge's views on disputed legal or political issues, or misrepresent the judge's identity, qualifications, or other fact.~~

(2) A candidate for a judicial office may respond to a personal attack or an attack on the candidate's record as long as the response does not violate Canon 5B (1).

Committee note: ~~Sec. 5B (1) is derived from ABA Canon 7A (1) (a), current Md. Canon XXVII, and current Md. Ethics Rule 3. Sec. 5B (2) is derived from ABA Canon 7A (1) (b) and current Md. Canon XXVII, although the ABA language probably is broad enough even to prohibit a judge from endorsing another judge who is also a candidate. However, public endorsement by one judicial candidate of another judicial candidate has long been permitted in Maryland. See Md. Judicial Ethics Opinion No. 20 (issued 4/25/74).~~

~~The Commentary to sec. 5B (2) is derived from the Commentary to ABA Canon 7A (1) (b) and is consistent with Md. Judicial Ethics Opinion No. 109 (issued 2/14/86).~~

~~Sec. 5B (3) is derived from ABA Canon 7B (1) (a). That canon also provides that a judge should encourage family members to adhere to the same standards of political conduct that apply to the judge. The Committee disagrees with this proposition; it believes that family members should be free to engage in political activity in their own right which is not related to the judge's office.~~

~~Sec. 5B (4) is derived from ABA Canon 7B (1) (b) and is generally implied in current Md. Canon XXIX and current Md.~~

~~Ethics Rule 10. ABA Canon 7B (1)(b) also provides that a judge should prohibit public officials or employees subject to the judge's direction and control for doing for the judge what the judge is prohibited from doing. The Committee believes that this is redundant to the remainder of the subsection and may even imply that a judge must terminate the employment of a person who does not follow the judge's admonitions - a result which may be unreasonable under the circumstances.~~

~~Sec. 5B (5) is derived from ABA Canon 7B (1) (c) and current Md. Canon XXIX.~~

~~ABA Canon 7B (2) prohibits a judge from personally soliciting or accepting campaign funds or soliciting publicly stated support; however, the judge may establish "committees of responsible persons" to do these things for the judge. The Committee believes that this is too restrictive and politically unrealistic, since it puts the judge at a distinct disadvantage to active opposition. Maryland law does require all campaign funds to be publicly reported by the campaign treasurer.~~

~~ABA Canon 7 permits partisan political activity by a judge who is a candidate for retention without a competing candidate only if the judge's candidacy has drawn "active opposition." However, Md. Judicial Ethics Opinion No. 88 (issued 8/29/80) stated that such a view "would not be realistic, since . . . even in the absence of an active campaign against the judge, negative votes might be cast against the judge's continuance in office, as was the case in the 1978 general election." The opinion concluded that the exception in the canons which permitted political activity by judges seeking election is "equally applicable" to appellate judges standing for retention under non-competitive election procedures. The Committee supports this conclusion.~~

Canon 5A (1)(b) of the Model Code of Judicial Conduct adopted by the American Bar Association in 2000 ("ABA Code (2000)") probably is broad enough even to prohibit a judge from endorsing another judge who is also a candidate, public endorsement by one judicial candidate of another judicial candidate has long been permitted in Maryland. See Maryland Judicial Ethics Opinion No. 20 (issued 4/25/74).

ABA Code (2000), Canon 5A (1)(d), which bars attendance of a judge-candidate at political gatherings, is omitted as not consistent with Maryland Judicial Ethics Opinion No. 63 (issued 5/8/78), which recognized that "any potential opponents . . . would clearly take advantage of this type of exposure [and] . . . it is neither desirable nor necessary that you, as a candidate for election, be denied similar opportunity."

ABA Code (2000), Canon 5A (1)(e) and C (2) prohibits a judge from personally soliciting or accepting campaign funds or personally soliciting publicly stated support; however, a judge may establish "committees of responsible persons" to do these things for the judge. The Judicial Ethics and the Rules Committee believe that this prohibition may be too restrictive, since it puts a judge at a political disadvantage to active opposition. Maryland law does require all campaign funds to be publicly reported by the campaign treasurer.

The Judicial Ethics and the Rules Committee disagree with the proposition in ABA Code (2000), Canon 5A (3)(a), which states that family members of a judge should adhere to the same standards of political conduct as a judge who is a candidate for judicial office. The Committees believe that family members should be free to engage, in their own right, in political activity that is not related to the judge's office.

ABA Code (2000), Canon 5A (3)(b) requires that a judge prohibit public officials and employees subject to the judge's direction and control from doing for the judge what the judge is prohibited from doing. The Committees believe that this is redundant and may even imply that a judge must terminate the employment of an individual who does not follow the judge's admonitions - a result that may be unreasonable under the circumstances.

C. STATUS OF A JUDGE OR LAWYER AS A CANDIDATE.

~~A newly appointed judge is a "candidate" for judicial office from the date of taking office until the general election pertaining to that judge's election or initial retention. Any other incumbent judge is a "candidate" for a period commencing two years prior to the general election pertaining to that judge's re-election or subsequent retention, or when a newly appointed judge to that court becomes a "candidate" in the same general election, whichever first occurs. A judge who is seeking election to another judicial office is a "candidate" for that~~

~~office when the judge files a certificate of candidacy in accordance with the state election laws, but no earlier than two years prior to the general election for that office, or when a newly appointed judge to that court becomes a "candidate" in the same general election, whichever first occurs.~~

"Candidate" applies to an individual seeking to be elected to or to retain a judicial office:

(1) as to a newly appointed judge, from the date of taking the oath of office until the general election pertaining to that judge's election or initial retention;

(2) as to any other incumbent judge, from the earlier of:

(a) the date two years prior to the general election pertaining to that judge's re-election or subsequent retention;  
or

(b) the date on which a newly appointed judge to that court becomes a "candidate" in the same general election;

(3) as to a judge who is seeking election to another judicial office, the earlier of:

(a) the date on which the judge files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office; or

(b) the date on which a newly appointed judge to that court becomes a "candidate" in the same general election; and

(4) as to a lawyer who is seeking a judicial office, the

date on which the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for the office.

Committee note: Maryland Judicial Ethics Opinion No. 14 (issued 5/23/74) allows a judge to begin campaigning as a candidate immediately upon assumption of office. The longest possible campaign period would be one day less than three years. See Maryland Constitution, Article IV, sec. §5 of the Constitution of Maryland. ~~Md. Maryland~~ Judicial Ethics Opinion No. 34 (issued 7/7/75), which had allowed an incumbent judge to ~~begin campaigning~~ campaign for re-election only from January 1 of the year of the election. ~~This,~~ was found to be too restrictive, so ~~the campaign period was changed~~ Maryland Judicial Ethics Opinion No. 57 (issued 11/28/77) changed the period to "times which are reasonable under the particular circumstances of each case." ~~Md. Judicial Ethics Opinion No. 57 (issued 11/28/77).~~ The Judicial Ethics Committee ~~believes~~ believed that the latter standard ~~is~~ was too vague, and that the Court of Appeals permitted an incumbent judge ~~should be permitted~~ to campaign as soon as the preceding general election ~~has~~ ended, which is a two-year period, or earlier if a newly appointed judge, who will be a running mate of the incumbent judge, ~~has~~ already has become a candidate. ~~ABA Canon 7A (2) considers an incumbent judge whose office is filled by election between competing candidates as always a candidate for re-election. While this may be a political necessity for judges in some states who must stand for re-election frequently, the Committee believes this is inappropriate in Maryland, where circuit court judges are elected for 15-year terms and appellate judges are retained for 10-year terms.~~

A judge should be permitted to engage in political activity regarding the judge's candidacy for judicial office only if the judge's intention to pursue that candidacy is clear. An incumbent judge's candidacy for election or re-election is fairly obvious, but a judge's intention to seek another judicial office is not as clear; therefore, the filing of a certificate of candidacy is required in the latter situation.

#### D. APPLICABILITY; DISCIPLINE.

A candidate who is a judge shall comply with Canon 5. A candidate who is a lawyer shall comply with Rule 8.2 of the Maryland Rules of Professional Conduct. A successful candidate

and a judge who unsuccessfully sought a different judicial office  
are subject to judicial discipline for campaign conduct. An  
unsuccessful candidate who is a lawyer is subject to attorney  
discipline for campaign conduct.

Cross reference: See Rules 16-802 through 16-810 concerning  
judicial discipline and Rules 16-701 through 16-781 concerning  
attorney discipline.

CANON 6

Compliance

A. This Code of ~~Judicial Conduct~~ applies to each judge of the Court of Appeals, the Court of Special Appeals, ~~the Circuit Courts~~ a circuit court, the District Court ~~and the Orphans' Courts~~, or an orphans' court.

~~Committee note. Sec. 6A is derived from current Md. Ethics Rule 14 a.~~

B. Violation of any of the ~~provisions of this Code of Judicial Conduct~~ Canons by a judge may be regarded as conduct prejudicial to the proper administration of justice within the meaning of Maryland Rule 16-803 (j), ~~of the Rules concerning~~ as to the Commission on Judicial Disabilities.

Committee note: ~~Sec. 6B is derived from current Md. Ethics Rule 15, which provides that a violation of an Ethics Rule is conduct prejudicial to the proper administration of justice. Whether the a violation actually is or is not prejudicial conduct is to be determined by the Court of Appeals of Maryland. Article IV, Sec. 4B of the Md. Constitution Maryland Constitution, Article IV, §4B gives that Court the authority to discipline any judge upon recommendation of the Commission on Judicial Disabilities. This disciplinary power is alternative to and cumulative with the impeachment authority of the General Assembly.~~

C. This Code of ~~Judicial Conduct~~, other than Canon 4C (Charitable, Civic, and Governmental Activities), D(2) (Financial Activities), E (Fiduciary Activities), and F (Service as Arbitrator or Mediator), applies to each judge of one of those courts who ~~has resigned or retired, if the judge is subject to~~

~~and is approved for recall for temporary service under Article IV, Section 3A of the Constitution, except that Canon 4C (Civil and Charitable Activities); Canon 4D (Financial Activities) — paragraphs (1), (2), and (3); Canon 4G (Fiduciary Activities); and Canon 4H (Arbitration) do not apply to any such former judge Maryland Constitution, Article IV, §3A.~~

~~Committee note. — Sec. 6C is derived from current Md. Ethics Rule 14 b. (1).~~

~~Paragraph C of the Compliance Section of the ABA Code exempts a retired judge subject to recall from only one provision of the ABA Code: The provision which prohibits a judge from serving on a governmental commission concerned with matters other than improvement of the law, legal system, or the administration of justice.~~

D. An individual to whom this Code becomes applicable shall comply immediately with all provisions of this Code except: Canon 2C (Avoidance of Impropriety and the Appearance of Impropriety), Canon 4D (2) (Financial Activities), and Canon 4E (**Fiduciary** Activities). The individual shall comply with Canons 2C and 4D (2) and E as soon as reasonably possible, and shall do so in any event as to Canon 2C within two years and as to Canon 4D (2) and E within one year.

~~CANON 7~~

~~Judicial Ethics Committee~~

~~A. The Chief Judge of the Court of Appeals shall appoint annually an Ethics Committee consisting of not less than seven and not more than nine members. One member shall be appointed from each of the Court of Special Appeals, the Circuit Courts, and the District Court. Three members may not be judges and of these one may not be a lawyer or an employee or officer within the judicial branch of government. The remaining members shall be judges appointed from any of the above courts, but not from the Court of Appeals. The Chief Judge shall designate one of the members as chairperson.~~

~~In addition to its other duties, the Committee~~

~~(1) is designated as the body to give advice with respect to the application of the provisions of Subtitles 5 and 6 of Title 15 of the State Government Article, Annotated Code of Maryland, to State officials of the Judicial Branch as defined in Title 15 of the State Government Article; and~~

~~(2) shall from time to time submit to the Court of Appeals recommendations for necessary or desirable changes in the Code of Judicial Conduct, and the Code of Conduct for Judicial Appointees.~~

~~B. Any judge may in writing request the opinion of the Committee on the proper interpretation of the Code of Judicial Conduct as~~

~~contained in Rule 16-813, or as to the provisions of Subtitle 5 or 6 of Title 15 of the State Government Article, Annotated Code of Maryland. A judge who has requested an opinion and who is in compliance with that opinion is protected from a charge of violation of Code or statute construed in that opinion.~~

~~C. A judge or any person who is subject to the Code for Judicial Appointees as contained in Rule 16-814 may in writing request the opinion of the Committee on the proper interpretation of the Code. A person who has requested an opinion and who is in compliance with it is protected from a charge of violation of the Code construed in that opinion.~~

~~D. Any person, other than a judge, who is a State official of the Judicial Branch within the meaning of that term as used in § 15-104 (2) of the State Government Article, Annotated Code of Maryland, may in writing request the opinion of the Committee on the proper interpretation of Subtitle 5 or 6 of Title 15 of the State Government Article. The person who requests an opinion and who is in compliance with it is protected from a charge of violation of the statute construed in that opinion.~~

~~E. Every opinion issued pursuant to this rule shall be filed with the Secretary of the Maryland Judicial Conference. The filed opinion is confidential and not public information unless the Court of Appeals otherwise directs. However, the Secretary shall prepare an edited version of each opinion, in which the identity of the person who has requested the opinion, the specific court~~

~~or geographical location of that person, and the identity of other individuals, organizations or groups mentioned in the opinion, may not be disclosed. Edited opinions shall be published in the manner the Secretary deems proper.~~

~~Committee note.--Canon 7 is derived from current Md. Ethics Rule 16.~~

~~Cross references. See Rule 16-802 (The Maryland Judicial Conference).~~

Source: This Rule is derived in part from former Rule 1231 ... [all subsequent language in the proposed Source note is new].

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-814, as follows:

Rule 16-814. MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

Preamble

The Court of Appeals has adopted this Code of Conduct for  
**Judicial Appointees** ~~as set forth in this Rule is adopted as a~~  
~~Rule of this Court governing to govern~~ the conduct of all  
**judicial appointees**. ~~For purposes of this Rule, judicial~~  
~~appointees are defined as: a master, examiner, auditor, referee~~  
~~appointed by the Court of Appeals of Maryland, the Court of~~  
~~Special Appeals of Maryland, a circuit court or an Orphans'~~  
~~Court; or a commissioner appointed by the Administrative Judge of~~  
~~the District Court of Maryland subject to the approval of the~~  
~~Chief Judge of the District Court of Maryland. This Code is~~  
generally patterned after the Maryland Code of Judicial Conduct,  
set forth in Rule 16-813, and the Committee notes, following many  
of the provisions of that Code, explain those provisions and may  
be of assistance in the interpretation of parallel provisions of  
this Code.

This Code sets forth minimum standards and is not intended  
as a limitation on an appointing authority's power to impose

additional requirements.

~~Committee note: (1) These are minimum standards and are not intended as a limitation on the appointing authority's power to impose additional requirements; and (2) This Code of Conduct is generally patterned after Maryland Rule 16-813, the Code of Judicial Conduct. The Committee notes found appended thereto explain many provisions of the Code of Judicial Conduct and may be used to assist in the interpretation of parallel provisions of this Code of Conduct.~~

## Terminology

In this Code the following definitions apply except as expressly otherwise provided or as necessary implication requires:

### (a) Fiduciary

"Fiduciary" includes administrator, attorney-in-fact by power of attorney, executor, guardian, personal representative, and trustee.

Cross reference: See Canons 3D (1)(c) and (2) and 4E. For a definition of "guardian," see Rule 1-202 (j).

### (b) Gift

"Gift" has the meaning stated in Code, State Government Article, §15-102.

Cross reference: See Canon 4D (5).

### (c) Honorarium

"Honorarium" has the meaning stated in Code, State Government Article, §15-102.

### (d) Impartial, Impartiality, or Impartially

"Impartial," "impartiality," or "impartially" denotes absence of bias or prejudice in favor of, or against, a party or class of parties, as well as maintaining an open mind in considering each issue that is or may come before the judicial appointee.

Cross reference: See Canons 2A; 3A, B (9) and D (1); 4A (1); and 5B (1)(a) and (d).

### (e) Judicial Appointee

"Judicial appointee" means: (1) an auditor, examiner, master, or referee appointed by the Court of Appeals, the Court of Special Appeals, a circuit court, or an orphans' court; or (2) a commissioner appointed by a District Administrative Judge with the approval of the Chief Judge of the District Court of Maryland.

Cross reference: For the definition of judicial appointee for purposes of filing a financial disclosure statement, see Rule 16-816 a.

#### Alternative A - Rules Committee's Version

##### (f) Knowingly, Knowledge, Known, or Knows

"Knowingly," "knowledge," "known," or "knows" means actual knowledge of the fact in question. Actual knowledge may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(iii) and (iv) and F (2) and (3) and 5B (1)(e).

#### Alternative B - Judicial Ethics Committee's Version

##### (f) Know

"Know" means to have actual knowledge of the fact in question, as may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(iii) and (iv) and F (2) and (3) and 5B (1)(e).

##### (g) Member of Judicial Appointee's Family

"Member of the judicial appointee's family" means a spouse, child, grandchild, parent, grandparent, or other relative

or individual with whom a **judicial appointee** maintains a close familial relationship.

Cross reference: See Canons 3D (1)(c) and 4G (1).

(h) Member of Judicial Appointee's Household

"**Member of the judicial appointee's household**" has the meaning stated in Code, State Government Article, §15-102 for "member of household."

Cross reference: See Canons 3D (2) and 4D (5).

(i) Political Organization

"**Political organization**" means a political party or other group, the principal purpose of which is to further the election or appointment of a candidate to political office.

Cross reference: See Canon 5B (1)(b) and (c).

(j) Require

"**Require,**" in the context that a **judicial appointee** "**require**" certain conduct of others, means that the **judicial appointee** is to take reasonable steps to direct and control the conduct of those persons.

Cross reference: See Canon 3B (3), (5), (8), and (10) and C (2).

(k) Significant Financial Interest

**Alternative A - Rules Committee's Version**

(1) "**Significant financial interest**" means ownership of:

(A) **an interest as the result of which the owner has received within the past three years, is currently receiving, or**

in the future is entitled to receive, more than \$1,000 per year;

(B) more than 3% of a business entity; or

(C) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

Alternative B - Judicial Ethics Committee's Version

(1) "Significant financial interest" means:

(A) ownership of an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year; or

(B) ownership by a judicial appointee or judicial appointee's spouse of:

(i) more than 3% of a business entity; or

(ii) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

(2) In applying this definition:

(A) ownership of an interest in a mutual or common investment fund that holds a security is not ownership of the security unless:

(i) the judicial appointee [Alternative B - Add: "or spouse" here] participates in the management of the fund; or

(ii) there is before the judicial appointee a proceeding

that could substantially affect the value of the interest, or such proceeding is imminent;

(B) ownership of a government security is not a **significant financial interest** in the issuer unless there is before the **judicial appointee** a proceeding that could substantially affect the value of the security, or such proceeding is imminent;

(C) neither a deposit in a financial institution nor a proprietary interest such as or similar to that of a depositor in a mutual savings association, member in a credit union, or policy holder in a mutual insurance company is a **significant financial interest** in the entity unless there is before the **judicial appointee** a proceeding that could substantially affect the value of the deposit or interest, or such proceeding is imminent; and

(D) an ownership interest in a security held by a charitable, civic, educational, fraternal or sororal, or religious organization will not be imputed to a **judicial appointee** merely because the **judicial appointee** or the **judicial appointee's** child, parent, or spouse is an adviser to or director or officer of, or otherwise actively participates in, the organization.

Cross reference: See Canon 3D (1)(c) and (d)(iii).

(1) Third Degree of Relationship

"**Third degree of relationship**" means the relationship between a **judicial appointee** and the following individuals: a great-grandparent, grandparent, parent, uncle, aunt, brother,

sister, child, grandchild, great-grandchild, nephew, or niece.

Cross reference: See Canon 3D (1)(d).

## CANON 1

### *Integrity and Independence*

An independent and honorable judicial system is indispensable to justice in our society. A **judicial appointee** ~~should~~ shall observe high standards of conduct so that the integrity and independence of the judicial system ~~may~~ will be preserved. The provisions of this Code ~~should~~ are to be construed and applied to further that objective.

## CANON 2

### *Avoidance of Impropriety and the Appearance of Impropriety*

A. A **judicial appointee** ~~should behave with propriety shall~~ avoid impropriety and ~~should avoid even~~ the appearance of impropriety. A **judicial appointee** ~~should~~ shall respect and comply with the law and ~~should~~ shall act at all times in a manner that promotes public confidence in the impartiality and integrity ~~and impartiality~~ of the judicial system. ~~The personal behavior of a judicial appointee in both the performance of official duties, and in everyday life, should be beyond reproach.~~

### COMMENT

Public confidence in the judicial system is eroded by irresponsible or improper conduct by **judicial appointees**. A **judicial appointee** must expect to be the subject of constant public scrutiny. A **judicial appointee** must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on **judicial appointee's** speech imposed by Canon 3B (8) and (9) that are indispensable to the maintenance of the **impartiality**, independence, and integrity of the judicial system.

The obligation to avoid impropriety and the appearance of impropriety applies to both the professional and personal conduct of a **judicial appointee**. Because it is not practicable to list all prohibited acts, the obligation is necessarily cast in general terms that extend to conduct by **judicial appointees** that is harmful although not specifically mentioned in this Code. Actual improprieties under this standard include violations of law, other specific provisions of this Code, or other court rules. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the **judicial appointee's** ability to carry out official responsibilities with competence, **impartiality**, and integrity is impaired. See also the Comment to Canon 2C.

B. A **judicial appointee** ~~should~~ shall not allow official conduct to be improperly influenced by a family, political, social, or other relationships ~~or by an employment offer or opportunity~~. A **judicial appointee** ~~should~~ shall not lend or use the prestige of the position to advance the private interests of the judicial appointee or others; nor ~~should~~ shall a **judicial appointee** convey or permit others to convey the impression that they are in a special position to influence official conduct. A **judicial appointee** ~~should~~ shall not testify voluntarily as a character witness.

#### COMMENT

~~Public confidence in the judicial system is eroded by irresponsible or improper conduct by judicial appointees. A judicial appointee must expect to be the subject of constant public scrutiny. A judicial appointee must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.~~

~~Membership of a judicial appointee in an organization that practices invidious discrimination on the basis of race, sex, religion, or national origin may give rise to perceptions that the judicial appointee's impartiality is impaired. It is therefore inappropriate for a judicial appointee to continue to hold membership in an organization that the judicial appointee knows or reasonably should know, practices and will continue to practice such invidious discrimination so as to give rise to the perception that the judicial appointee's impartiality is impaired. Whether an organization practices and will continue to practice that kind of invidious discrimination is often a complex question to which judicial appointees should be sensitive. The answer cannot be determined merely from an examination of an organization's current membership rolls but may depend on the nature and purpose of the organization, and of any restrictions on membership, the history of the organization's selection of members, and other relevant factors. Ultimately, each judicial appointee must determine in the judicial appointee's own~~

~~conscience whether an organization of which the judicial appointee is a member practices invidious discrimination.~~

Maintaining the prestige of the position of **judicial appointee** is essential to a system of government in which the judicial system functions independently of the executive and legislative branches. Respect for the position of **judicial appointee** facilitates the orderly conduct of legitimate judicial functions. **Judicial appointees** should distinguish between proper and improper use of the prestige of position in all of their activities. For example, it would be improper for a **judicial appointee** to allude to his or her position to gain a personal advantage, such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, official letterhead must not be used for conducting a **judicial appointee's** personal business.

A **judicial appointee** also must avoid lending or using the prestige of the position for the advancement of the private interests of others. For example, a **judicial appointee** must not use the position to gain advantage in a civil suit involving a **member of the judicial appointee's family**. As to the acceptance of awards, see Canon 4D (5)(c) and the accompanying Comment.

Although a **judicial appointee** should be sensitive to possible abuse of the prestige of the position, the **judicial appointee** may serve as a reference or provide a letter of recommendation based on the **judicial appointee's** own knowledge.

**Judicial appointees** may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration.

~~The testimony of a **judicial appointee** must not testify voluntarily as a character witness injects because to do so may lend the prestige of the appointment into the proceeding in which a judicial appointee testifies and may be misunderstood to be an official testimonial position in support of the party for whom the **judicial appointee** testifies. This Canon A **judicial appointee** may, however, does not afford a judicial appointee the privilege against testifying in response to an official summons testify when properly subpoenaed.~~

C. A **judicial appointee** shall not hold membership in any organization that practices invidious discrimination on the basis

of national origin, race, religion, or sex.

#### COMMENT

Membership of a **judicial appointee** in an organization that practices invidious discrimination on the basis of national origin, race, religion, or sex gives rise to perceptions that the **judicial appointee's impartiality** is impaired. It is therefore inappropriate for a **judicial appointee** to continue to hold membership in an organization that the **judicial appointee knows**, or reasonably should **know**, practices and will continue to practice such invidious discrimination so as to give rise to the perception that the **judicial appointee's impartiality** is impaired. Membership in an organization would not be prohibited unless that membership would reasonably give rise to a perception of partiality. Certain organizations - such as congregational brotherhoods, sisterhoods, or bowling leagues - may well be restricted to individuals belonging to the particular congregation and therefore to those sharing a particular religious belief, but it is unlikely that membership in such an organization would cause people reasonably to believe that the **judicial appointee** is partial.

Whether an organization practices and will continue to practice that kind of invidious discrimination is often a complex question to which **judicial appointees** should be sensitive. The answer cannot be determined merely from an examination of an organization's current membership rolls but may depend on (1) the nature and purpose of the organization, (2) any restrictions on membership, (3) the history of the organization's selection of members, and (4) other relevant factors such as that the organization is dedicated to the preservation of cultural, ethnic, or religious values of legitimate common interests to its members, or that it is, in fact and effect, an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership, on the basis of national origin, race, religion, or sex, individuals who otherwise would be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of national origin, race, religion, or sex, a **judicial appointee's** membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 for a **judicial**

appointee to arrange a meeting at a club that the **judicial appointee knows** practices invidious discrimination on the basis of national origin, race, religion, or sex, in its membership or other policies, or for the **judicial appointee** to use such club regularly. Moreover, public manifestation by a **judicial appointee** of his or her **knowing** approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the **impartiality** and integrity of the judicial system, in violation of Canon 2A.

When a **judicial appointee** learns that an organization to which the **judicial appointee** belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2A, the **judicial appointee** is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in all other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the **judicial appointee's** first learning of the practices), the **judicial appointee** is required to resign immediately from the organization.

### CANON 3

#### *~~Impartial and Diligent Performance of Official Duties~~*

In the performance of official duties, the following standards apply:

#### A. GENERAL RESPONSIBILITIES.

A **judicial appointee** shall perform the duties of the position diligently, **impartially**, and without having or manifesting bias or prejudice, including bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status.

#### COMMENT

A **judicial appointee** must perform his or her duties fairly and **impartially**. A **judicial appointee** who manifests bias of any kind in a proceeding impairs the fairness of the proceeding and brings the judicial system into disrepute. Facial expression and body language, in addition to oral communication, can give an appearance of bias. A **judicial appointee** must be alert to avoid behavior that may be perceived as prejudicial. For example, a **judicial appointee** must refrain from comment, gesture, or other conduct that could reasonably be perceived as sexual harassment.

#### Alternative A - Rules Committee's Version

A. ~~B. ADJUDICATIVE RESPONSIBILITIES~~ **RESPONSIBILITIES FOR THE CONDUCT OF PROCEEDINGS.**

Alternative B - Judicial Ethics Committee's Version

~~A.~~ **B. ADJUDICATIVE RESPONSIBILITIES.**

(1) A **judicial appointee** ~~should~~ shall be faithful to the law and maintain professional competence in it.

(2) A **judicial appointee** ~~should~~ shall not be ~~unswayed~~ swayed by partisan interests, public clamor, or fear of criticism.

(3) A **judicial appointee** ~~should maintain~~ shall require order and decorum in proceedings before the **judicial appointee**.

(4) A **judicial appointee** ~~should~~ shall be ~~patient,~~ dignified,  
~~and.~~

(5) A **judicial appointee** shall be courteous to and patient with lawyers, litigants, witnesses, ~~lawyers,~~ and others with whom the **judicial appointee** deals in an official capacity and ~~should~~ shall require similar conduct of lawyers, and ~~of staff,~~ court personnel and others subject to the **judicial appointee's** direction and control.

COMMENT

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. **Judicial appointees** can be businesslike and efficient while being deliberate and patient.

~~(5)~~ (6) (a) A **judicial appointee** ~~should~~ shall accord to every person who ~~is legally interested~~ has a legal interest in a proceeding pending before the **judicial appointee**, or the that person's lawyer, ~~full~~ the right to be heard according to law,

~~and, except as authorized by law,~~

(b) While presiding over a proceeding, a **judicial appointee** shall neither initiate, permit, or consider *ex parte* communications nor consider ~~ex parte~~ or other communications made to the **judicial appointee** outside the presence of the parties concerning a pending or impending proceeding, except as otherwise provided in Canon 3B (6).

(c) *Ex parte* communications that relate to scheduling or other administrative purposes or emergencies and not to substantive matters or issues on the merits are authorized, if: (i) circumstances require; (ii) the **judicial appointee** reasonably believes that no party will gain a procedural or tactical advantage as a result of the communication; (iii) the **judicial appointee** makes provision promptly to notify all other parties of the substance of the *ex parte* communication; and (iv) the **judicial appointee** affords the parties reasonable opportunity to respond.

(d) With the consent of the parties, a **judicial appointee** may confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the **judicial appointee**.

(e) A **judicial appointee**, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the **judicial appointee** if the **judicial appointee** gives notice to: (i) makes provision promptly to notify all of the

parties ~~of the name of the person~~ as to the expert consulted and the substance of the advice~~,i~~ and (ii) affords the parties reasonable opportunity to respond.

(f) A **judicial appointee** may consult with court personnel whose function is to aid the **judicial appointee** in carrying out adjudicative responsibilities and with judges and other **judicial appointees**.

(g) A **judicial appointee** may initiate or consider an *ex parte* communication when expressly authorized by law to do so.

#### COMMENT

The proscription prohibition against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. ~~It does not preclude a judicial appointee from consulting with judges, other judicial appointees, or with court personnel whose function is to aid the judicial appointee in carrying out adjudicative responsibilities.~~

To the extent practicable, all parties or their lawyers must be included in communications with a **judicial appointee**.

Whenever Canon 3B (6) requires the presence of, or notice to, a party, it is the party's lawyer or, if the party is unrepresented, the party who is to be present or to whom notice is to be given.

Canon 3B (6) allows for limited *ex parte* communication to facilitate scheduling and other administrative purposes and to accommodate emergencies. Even then, however, a **judicial appointee** must discourage *ex parte* communication and allow it only if all of the criteria stated in Canon 3B (6) clearly are met. A **judicial appointee** must disclose to all parties all *ex parte* communication described in Canon 3B (6)(c) and (e) regarding a proceeding pending or impending before the **judicial appointee**.

A **judicial appointee** must not independently investigate facts in a case and must consider only the evidence presented,

except matters of which the **judicial appointee** properly can take judicial notice.

A **judicial appointee** may request a party to submit proposed findings of fact and conclusions of law if all of the other parties are apprised of the request and given an opportunity to respond to the proposed findings and conclusions.

A **judicial appointee** must make reasonable efforts, including the provision of appropriate supervision, to ensure that Canon 3B (6) is not violated through personnel subject to the **judicial appointee's** direction and control.

~~(6)~~ (7) A **judicial appointee** ~~should~~ shall dispose promptly of official business efficiently, fairly, and promptly.

#### COMMENT

Prompt disposition of official business requires a **judicial appointee** to devote adequate time to official duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that ~~officials,~~ personnel subject to the **judicial appointee's** direction and control and litigants and their lawyers cooperate to that end.

~~(7)~~ (8) A **judicial appointee** ~~should~~ shall abstain from public comment ~~about that relates~~ to a proceeding pending or impending ~~proceeding~~ in any court, and that might reasonably be expected to affect the outcome of that proceeding or to impair the fairness of that proceeding and ~~should~~ shall **require** similar abstention on the part of personnel subject to the **judicial appointee's** direction and control. ~~This subsection~~ Canon 3B (8) does not prohibit a **judicial appointee** from making public statements in the course of official duties or from explaining for public information the procedures of a court.

COMMENT

"Personnel subject to the **judicial appointee's** direction and control" does not include the lawyers in a proceeding before a **judicial appointee**. The conduct of lawyers in this regard is governed by Rule 3.6 of the Maryland [Lawyers'] Rules of Professional Conduct.

(9) With respect to a case, controversy, or issue that is likely to come before the court, a **judicial appointee** shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the duties of the appointed position.

COMMENT

Canon 3B (8) and (9) restrictions on a **judicial appointee's** speech are essential to the maintenance of the **impartiality, independence, and integrity** of the judicial system. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that a **judicial appointee** abstain from public comment regarding a pending or impending proceeding continues during any trial court or appellate process and until final disposition.

(10) A **judicial appointee** shall **require** lawyers in proceedings before the **judicial appointee** to refrain from manifesting, by word or conduct, bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. Canon 3B (10) does not preclude legitimate advocacy when such status or other similar factor is an issue in a proceeding.

(11) Unless recusal is appropriate, a **judicial appointee**

shall hear and determine matters assigned to the **judicial appointee.**

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records); Code, Tax-General Article, §13-1018 (tax information).

B. C. ADMINISTRATIVE RESPONSIBILITIES.

(1) A **judicial appointee** ~~should diligently~~ shall discharge his or her administrative responsibilities, ~~maintain professional competence in judicial administration, and facilitate the performance of administrative responsibilities of~~ without favoritism or nepotism and shall cooperate with judges, other **judicial appointees**, and court officials in the administration of court business.

(2) A **judicial appointee** ~~should~~ shall **require** ~~staff and court officials~~ personnel and others subject to the **judicial appointee's** direction and control to observe the standards of ~~fidelity and diligence~~ and fidelity that apply to the **judicial appointee** and to refrain from manifesting bias or prejudice in the performance of their official duties.

~~(3) A judicial appointee should take or initiate appropriate corrective measures against a judge, a judicial appointee, or a lawyer for unprofessional conduct of which the judicial appointee~~

~~may be aware.~~

COMMENT

~~Corrective measures may include a private admonition or reporting misconduct to the appropriate disciplinary body or a bar association counseling program.~~

~~(4) (3) A **judicial appointee** should shall not make unnecessary appointments. A **judicial appointee** should exercise the power of appointment only on the basis of merit, avoiding nepotism and favoritism. The **judicial appointee** should and shall not approve compensation of appointees beyond the fair value of services rendered.~~

COMMENT

Consent by the parties to an appointment or an award of compensation does not relieve ~~the~~ a **judicial appointee** of the obligation prescribed by ~~this section~~ Canon 3C (3).

~~C. D.~~ D. RECUSAL.

(1) A **judicial appointee** ~~should not participate in~~ shall recuse himself or herself from a proceeding in which the **judicial appointee's impartiality** might reasonably be questioned, including ~~but not limited to~~ an instances ~~where~~ when:

(a) the **judicial appointee** has a personal bias or prejudice concerning a party, or a party's lawyer or ~~personal~~ extra-official knowledge of a disputed evidentiary facts concerning the proceeding;

(b) (i) the **judicial appointee** served as a lawyer in the

matter in controversy, or a lawyer with whom the **judicial appointee** previously practiced law served during such association as a lawyer concerning the matter, or the **judicial appointee** or ~~lawyer~~ has been a material witness concerning it;

#### COMMENT

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of ~~this subsection~~ Canon 3D (1)(b); a **judicial appointee** formerly employed by a governmental agency, however, should not participate in a proceeding if the **judicial appointee's impartiality** might reasonably be questioned because of such association.

~~(c)~~ (ii) if a **judicial appointee** is part-time, the **judicial appointee** or any attorney with whom the **judicial appointee** is associated, represents a party or otherwise has an interest in the proceeding;

~~(d)~~ (c) the **judicial appointee knows** that he or she, individually or as a **fiduciary**, or ~~the judicial appointee's spouse or minor child of the judicial appointee residing in the judicial appointee's household,~~ a member of the judicial appointee's family, has a **significant financial interest** in the subject matter in controversy or in a party to the proceeding, ~~or any other interest that could be substantially affected by the outcome of the proceeding;~~

#### COMMENT

~~As a minimum standard for determining what constitutes a "significant financial interest," the judge [sic] should apply the definition of "financial interest" provided in the Maryland Public Ethics Law, Md. Code, State Government Article, § 15-~~

~~102(n) (1995 Replacement Volume and 1998 Supplement): "(1) Ownership of an interest as the result of which the owner has received within the past 3 years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year; or (2)(i) ownership of more than 3% of a business entity; or (ii) ownership of securities of any kind that represent, or are convertible into, ownership of more than 3% of a business entity."~~

~~Moreover, there~~ There may be situations involving that involve a lesser financial interest ~~which also~~ but nonetheless require recusal because of the **judicial appointee's** own sense of propriety. Conversely, there are situations where participation may be appropriate even though the "financial interest" threshold is present. In the latter case, the **judicial appointee** ~~must~~ first must obtain an opinion from the Judicial Ethics Committee ~~to obtain an exemption with regard to the appropriateness,~~ except as provided in Canon ~~3D~~ 3E (Non-recusal by Agreement).

~~(e)~~ (d) the **judicial appointee**, the ~~spouse of the judicial appointee's spouse,~~ a person an individual within the **third degree of relationship** to either of them, or the spouse of such a person an individual:

(i) is a party to the proceeding, ~~or is known by the judicial appointee to be an officer,~~ a director, officer, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

#### COMMENT

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the **judicial appointee** is affiliated does not of itself require recusal of the **judicial appointee**. Under appropriate circumstances, the fact that "the **judicial appointee's impartiality** might reasonably be questioned" under Canon ~~3C~~ 3D (1), or that the lawyer-relative is **known** by the **judicial appointee** to have an interest in the law firm that could be "substantially affected by the ~~outcome of the proceeding~~" under Canon ~~3C~~ 3D (1)(d)(iii), may require the **judicial appointee's** recusal.

(iii) is **known** by the **judicial appointee** to have ~~an a~~ **significant financial interest** that could be substantially affected by the ~~outcome of the~~ proceeding; or

(iv) is to the **judicial appointee's knowledge** likely to be a material witness in the proceeding; or

(e) the **judicial appointee**, while a **judicial appointee** or a candidate for judicial office, has made a public statement that commits, or appears to commit, the **judicial appointee** with respect to:

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

(2) A **judicial appointee** ~~should~~ shall keep informed about his or her personal and **fiduciary** financial interests, and shall make a reasonable effort to keep informed about the personal financial interests of ~~the judicial appointee's spouse and minor children residing in the~~ each member of the judicial appointee's household.

~~(3) For the purposes of this section:~~

~~(a) the degree of relationship is calculated according to the civil law system;~~

#### COMMENT

~~The following persons are within three degrees of relationship according to the civil law system: parent, grandparent, sibling, child, grandchild, uncle, aunt, niece, and nephew.~~

~~(b) "fiduciary" includes such relationships as personal~~

~~representative, executor, administrator, trustee, custodian,  
attorney in fact by power of attorney, and guardian;~~

~~(c) "financial interest" means ownership of a legal or  
equitable interest, or a relationship as director, advisor, or  
other active participant in the affairs of a party, except that:~~

~~(i) ownership in a mutual or common investment fund  
that holds securities is not a "financial interest" in such  
securities unless the judicial appointee participates in the  
management of the fund;~~

~~(ii) an office in an educational, religious,  
charitable, fraternal, or civic organization is not a "financial  
interest" in securities held by the organization.~~

~~(iii) the proprietary interest of a policy holder in a  
mutual insurance company, or a depositor in a mutual savings  
association, or a similar proprietary interest, is a "financial  
interest" in the issuer only if the outcome of the proceeding  
could substantially affect the value of the interest;~~

~~(iv) ownership of government securities is a "financial  
interest" in the issuer only if the outcome of the proceeding  
could substantially affect the value of the securities.~~

#### COMMENT

Under Canon 3D (1), a **judicial appointee** must recuse himself or herself whenever the **judicial appointee's impartiality** might reasonably be questioned, regardless of whether any of the specific instances in Canon 3D (1) apply.

A **judicial appointee** must disclose on the record information that the **judicial appointee** believes the parties or their lawyers might consider relevant to the question of recusal, even if the

judicial appointee believes that there is no real basis for recusal.

By decisional law, the rule of necessity may override the rule of recusal. As to a judge, for example, the judge might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, a **judicial appointee** must disclose on the record the basis for possible recusal and, if practicable, use reasonable efforts to transfer the matter promptly to another **judicial appointee** or judge.

D. E. NON-RECUSAL BY AGREEMENT.

~~Where If recusal would be required by Canon 3C 3D (1)(c) or Canon 3C (1)(d), the **judicial appointee** may disclose on the record the basis of reason for the recusal. If the lawyers, after consultation with their clients and independently of the **judicial appointee**'s participation, all agree on the record that the **judicial appointee** ought to participate notwithstanding the basis for recusal, the **judicial appointee** may participate in the proceeding. If after disclosure of any reason for recusal other than as required by Canon 3D (a)(1), the parties and lawyers, out of the presence of the **judicial appointee**, all agree that the **judicial appointee** need not recuse himself or herself, and the **judicial appointee** is willing to participate, the agreement of the parties shall be incorporated in the record, and the **judicial appointee** may participate in the proceeding.~~

## COMMENT

~~This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. A pro se party may agree to allow participation by the judicial appointee gives the parties an opportunity to waive the recusal if the **judicial appointee** agrees. The **judicial appointee** may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the **judicial appointee**. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a **judicial appointee** may wish to have all parties and their lawyers sign a waiver agreement.~~

### F. DISCIPLINARY RESPONSIBILITIES.

(1) A **judicial appointee** should take or initiate appropriate corrective measures with respect to the unprofessional conduct of a judge, another **judicial appointee**, or a lawyer.

(2) If other corrective measures are not appropriate or, if attempted, were not successful, a **judicial appointee** shall inform the Commission on Judicial Disabilities of facts **known** to that **judicial appointee** that raise a substantial question as to a judge's fitness for office.

(3) If other corrective measures are not appropriate or, if attempted, were not successful, a **judicial appointee** shall inform the Attorney Grievance Commission of facts **known** to the **judicial appointee** that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(4) Acts of a **judicial appointee** required or permitted by Canon 3F (1), (2), or (3) shall be absolutely privileged, and no

civil action predicated thereon may be instituted against the  
judicial appointee.

COMMENT

Permitting a **judicial appointee** to take "corrective"  
measures gives the **judicial appointee** a wide range of options to  
deal with unprofessional conduct. Appropriate corrective  
measures may include direct communication with the judge,  
**judicial appointee**, or lawyer who is believed to have committed  
the violation or other direct action if available. There may be  
instances of professional misconduct that would warrant a private  
admonition or referral to a bar association counseling service.

## CANON 4

### *Extra-Official Activities*

~~Except as otherwise prohibited or limited by law or these canons, a~~

#### A. EXTRA-OFFICIAL ACTIVITIES IN GENERAL.

~~A **judicial appointee** may engage in the following activities, if doing so does~~ shall conduct all extra-official activities so that they do not:

(1) cause a substantial question as to the **judicial appointee's** capacity to act **impartially** as a **judicial appointee**;

(2) demean the position; or

(3) interfere with the proper performance of official duties, does not reflect adversely upon the judicial appointee's impartiality, and does not detract from the dignity of the position.

#### COMMENT

Complete separation of a **judicial appointee** from extra-official activities is neither possible nor desirable. A **judicial appointee** should not become isolated from the **judicial appointee's** community.

An extra-official activity, however, may be perceived to reflect on a **judicial appointee's** behavior. For example, an expression of bias or prejudice by a **judicial appointee**, even outside his or her official activities, may cause a substantial question as to the **judicial appointee's** capacity to act **impartially** as a **judicial appointee**. Expressions that may do so include jokes or other remarks demeaning individuals on the basis of their age, disability, national origin, race, religion, sex,

sexual orientation, or socioeconomic status. See Canon 2C and the accompanying Comment.

A. B. AVOCATIONAL ACTIVITIES.

A Subject to other provisions of this Code, a **judicial appointee** may  ~~speak, write,~~ lecture,  ~~and speak,~~ teach, write, and otherwise participate in other extra-official  ~~on both legal and non-legal subjects.~~ A ~~judicial appointee~~ may participate in other activities concerning the law,  ~~the legal system and the administration of justice, the legal system, improvement of the law, and non-legal matters.~~ A ~~judicial appointee~~ may engage in ~~social and recreational activities.~~

COMMENT

Complete separation of a judicial appointee from extra-official activities is neither possible nor wise; a judicial appointee should not become isolated from the society in which he or she may live. A **judicial appointee** is in a unique position to contribute to the administration of justice, the legal system, and improvement of the law, including revision of substantive and procedural law and improvement of criminal and juvenile justice. As time may permit, a **judicial appointee** is encouraged to do so, either independently or through a bar association or other organization dedicated to the improvement of the law.

The phrase "subject to other provisions of this Code" is used, in this and other sections of Canon 4, primarily in connection with a **judicial appointee's** charitable, civic, or governmental activities, to remind **judicial appointees** that use of permissive language in various sections of this Code does not relieve a **judicial appointee** from the other provisions of this Code that apply to the specific conduct.

B. C. CHARITABLE, CIVIC, AND GOVERNMENTAL ACTIVITIES.

(1) Except when acting pro se in a matter that involves the judicial appointee or the judicial appointee's interests, when acting as to a matter that concerns the administration of justice, the legal system, or improvement of the law, or when acting as otherwise allowed under Canon 4, a judicial appointee may shall not appear at a public hearing before and confer, or otherwise consult with public bodies or officials on matters concerning the judicial system or the administration of justice, an executive or legislative body or official.

COMMENT

As suggested in the *Reporter's Notes to the ABA Code of Judicial Conduct (1990)*, the "administration of justice" is not limited to "matters of judicial administration" but is broad enough to include other matters relating to a judicial system.

Alternative A - Rules Committee's Version

(2) A Except as otherwise provided by law and subject to Canon 4A, a judicial appointee may serve on governmental advisory bodies devoted to the improvement of the law, the legal system or the administration of justice and may represent his or her country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities accept appointment to a governmental commission, committee, or position.

Alternative B - Judicial Ethics Committee's Version

(2) ~~A~~ Except as otherwise provided by law and subject to Canon 4A, a judicial appointee may serve on accept appointment to a governmental advisory bodies devoted to the improvement of the law, the legal system or the administration of justice and may represent his or her country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities commission, committee, or position.

COMMENT

~~Valuable services have been rendered in the past to the states and the nation by judicial appointees who may be appointed by the executive to undertake additional assignments. The appropriateness of conferring these assignments on judicial appointees must be reassessed, however, in light of the demands on time created by today's crowded dockets and the need to protect the judicial appointees from involvement in matters that may prove to be controversial. Judicial appointees should not be expected or permitted to~~ A judicial appointee may not accept a governmental appointments that could interfere with their the effectiveness and independence. Nor can a judicial appointee of the judicial system, assume or discharge the legislative or an executive or legislative powers of government power (Maryland Declaration of Rights, Article 8), or hold an "office" under the constitution or other laws of the United States or State of Maryland (Maryland Declaration of Rights, Articles 33 and 35).

(3) ~~As a private citizen, a judicial appointee may appear before or confer with public bodies or officials on matters that directly relate to a judicial appointee's person, immediate family or property so long as the judicial appointee does not use, and avoids the appearance of using, the prestige of the judicial appointment to influence decision-making. A judicial~~

appointee may represent this country, a state, or a locality on ceremonial occasions or in connection with cultural, educational, or historical activities.

~~C. CIVIC AND CHARITABLE ACTIVITIES.~~

(4) (a) Subject to other provisions of this Code, a **judicial appointee** may ~~participate and serve as a member, officer, be a director, trustee member, non-legal advisor~~ adviser, officer, or trustee of an educational, religious, charitable, civic, educational, fraternal or sororal, law-related, or civic religious organization not conducted for the economic or political advantage of its members, subject to the following provisions:

COMMENT

See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code." As an example of the meaning of the phrase, a **judicial appointee** permitted under Canon 4C (4) to serve on the board of an organization may be prohibited from such service by, for example, Canon 2C or 4A, if the organization practices invidious discrimination or if service on the board otherwise causes a substantial question as to the **judicial appointee's** capacity to act **impartially** as a **judicial appointee** or as to service as a legal adviser.

(b) A **judicial appointee** shall not be a director, member, non-legal adviser, officer, or trustee of an organization that is conducted for the economic or political advantage of its members.

~~(1) (c) A **judicial appointee** should~~ shall not participate and serve be a director, member, non-legal adviser, officer, or trustee of an organization if it is likely that the organization:

~~(a) (i) will be engaged in proceedings that would ordinarily come before the judicial appointee; (b) will be regularly engaged regularly in adversary proceedings in any court; or~~

~~(c) (ii) deals with people who are referred to the organization by the any court on recommendation of the **judicial appointee** or other **judicial appointees** of that court exercising similar authority.~~

#### COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a **judicial appointee** regularly to reexamine the activities of each organization with which a the **judicial appointee** is affiliated to determine if whether it is proper to continue a relationship with it. For example, in many jurisdictions, charitable organizations are ~~now~~ more frequently in court now than in the past or make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

~~As a judicial officer and person specially learned in the law, a judicial appointee is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and the improvement of criminal and juvenile justice. To the extent that time permits, a judicial appointee is encouraged to do so, either independently or through a bar association or other organization dedicated to the improvement of the law.~~

~~(2) (d) (i) A **judicial appointee** should shall not participate personally in:~~

~~(A) solicit solicitation of funds for any such organization, or other fund-raising activities, except that a **judicial appointee** may solicit funds from other **judicial**~~

appointees over whom the **judicial appointee** does not exercise supervisory authority; or

(B) a membership solicitation that reasonably might be perceived as coercive or, except as permitted in Canon 4C (4)(d)(i)(A), is essentially a fund-raising mechanism.

(ii) A **judicial appointee** shall not participate as a guest of honor or speaker at a fund-raising event.

(iii) Except as otherwise allowed by Canon 4C (4)(d), a **judicial appointee** shall not use or permit the use of lend the prestige of his or her position for that purpose, but a judicial appointee may be listed as an officer, director, or trustee of the organization fund-raising or membership solicitation.

(iv) A **judicial appointee** may:

(A) assist an organization in planning fund-raising;

(B) participate in the investment and management of an organization's funds; and

(C) make recommendations to private and public and private fund-granting agencies organizations on projects and programs and projects of which the judicial appointee has personal knowledge and which concern concerning the law administration of justice, the legal system, or the administration of justice improvement of the law. A judicial appointee should not be a speaker or the guest of honor at an

~~organization's fund raising events, but may attend such events.~~

D. FINANCIAL ACTIVITIES.

(1) A **judicial appointee** ~~should refrain from financial and~~  
shall not engage in business or financial dealings that:

(a) use the judicial appointee's position reasonably would  
be perceived to violate Canon 2B; or

(b) involve the **judicial appointee** in frequent  
transactions or continuing business relationships with lawyers or  
other persons likely to come before the **judicial appointee** or the  
appointing court in matters relating to the **judicial appointee's**  
duties and authority.

COMMENT

Canon 4D (1)(b) is necessary to avoid creating an appearance  
of exploitation of position or favoritism and to minimize the  
potential for recusal. A **judicial appointee** also should  
discourage **members of the judicial appointee's family** from  
engaging in dealings that reasonably would appear to exploit the  
**judicial appointee's** position. With respect to affiliation of  
relatives of the **judicial appointee** with law firms appearing  
before the **judicial appointee**, see the Comment to Canon 3D (1)(d)  
relating to recusal.

Participation by a **judicial appointee** in business and  
financial dealings is subject to the general prohibitions in  
Canon 4A against activities that cause a substantial question as  
to **impartiality**, demean the position, or interfere with the  
proper performance of official duties. Such participation also  
is subject to the general prohibition in Canon 2 against  
activities involving impropriety or the appearance of impropriety  
and the prohibition in Canon 2B against misuse of the prestige of  
the position. In addition, a **judicial appointee** must maintain  
high standards of conduct in all of the **judicial appointee's**  
activities, as set forth in Canon 1. See the Comment to Canon 4B  
regarding use of the phrase "subject to other provisions of this

Code."

~~This section~~ Canon 4D is not intended to apply to the practice of law of part-time **judicial appointees**, which is covered by Canon ~~4F~~ 4G (2).

(2) ~~A~~ Subject to other provisions of this Code, a **judicial appointee** may hold and manage investments, including real estate, and engage in other remunerative activity except that a full-time **judicial appointee** shall not hold ~~any office or directorship or office in any public utility,~~ bank, insurance company, lending institution, public utility, savings and loan association, ~~lending institution, insurance company,~~ or any other business, ~~corporation or enterprise,~~ or venture ~~which~~ that is affected with a public interest.

(3) A **judicial appointee** ~~should~~ shall manage investments and other financial interests to minimize the number of cases in which recusal would be required. As soon as practicable without serious financial detriment, ~~the~~ a **judicial appointee** ~~should~~ shall dispose of ~~investments and other~~ those financial interests that might require frequent recusal.

(4) ~~Information~~ A **judicial appointee** shall neither use nor disclose, in financial dealings or for any other purpose not related to the **judicial appointee's** official duties, information acquired by a judicial appointee in his or her judicial official capacity should not be used or disclosed by the judicial appointee in financial dealings or for any other purpose not related to the judicial appointee's official duties and

confidential, privileged, or otherwise not part of the public record.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records) and Code, Tax-General Article, §13-1018 (tax information).

~~E. COMPENSATION AND EXPENSE REIMBURSEMENT.--~~

~~A judicial appointee may receive compensation and reimbursement of expenses for activities permitted by this Code, subject to the following restrictions:~~

~~(1) Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judicial appointee would receive for the same activity.~~

~~(2) Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judicial appointee and, where appropriate to the occasion, by the judicial appointee's spouse. Any payment in excess of such an amount is compensation.~~

~~F. GIFTS.--~~

~~(1) (5) A **judicial appointee** must be especially careful in accepting shall not accept, and shall urge members of the judicial appointee's household not to accept, a bequest, favor, **gifts, favors, and or loans** from persons not in the judicial appointee's immediate family. However innocently intended, gifts~~

~~and favors from such persons, especially gifts and favors having substantial monetary value, may create an appearance that the judicial appointee could be improperly beholden to the donor. Subject to this caveat, and except as otherwise prohibited or limited by law or these canons, a judicial appointee may accept anyone except for:~~

(a) a book, tape, or other resource material supplied by a publisher on a complimentary basis for official use, a gift incident to a public testimonial, or books supplied by publishers on a complimentary basis for official use an invitation to a **judicial appointee** and the **judicial appointee's** spouse or guest to attend a bar-related function or an activity devoted to the administration of justice, the legal system, or improvement of the law;

(b) an award, benefit, or **gift** incident to the business, profession, or other separate activity of a spouse or other **member of the judicial appointee's household**, including an award, benefit, or **gift** for the use of both the household member and **judicial appointee** (as spouse or household member) if the award, benefit, or **gift** could not reasonably be perceived as intended to influence the **judicial appointee** in the performance of official duties;

~~(b)~~ (c) ordinary social hospitality;

~~(c)~~ (d) a **gift** from a friend or relative ~~by reason of some~~ for a special occasion, such as a wedding, an anniversary,

birthday, or wedding and the like, if the **gift** is fairly commensurate with the ~~nature of the~~ occasion and the friendship or relationship;

~~(d)~~ (e) a ~~gift, bequest,~~ favor, **gift**, or loan from a relative or close personal friend whose appearance ~~before the~~ judicial appointee or whose interest in a case would in any event require a recusal under Canon ~~3C~~ 3D;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not **judicial appointees**.i

~~(e)~~ (g) a ~~scholarship or fellowship~~ or scholarship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other bequest, favor, **gift**, or loan if: (1) the donor or lender is not a person whose interests have come or are likely to come before the **judicial appointee** and (2) the **judicial appointee** reports, on the **judicial appointee's** financial disclosure form, all bequests, favors, **gifts**, and loans required under Rule 16-816 to be reported.

~~(2) The standards set forth in subsection (1) of this section also apply to gifts, favors, and loans offered to members of the judicial appointee's family who reside in the judicial appointee's household. For purposes of this Canon and absent extraordinary circumstances, gifts, favors and loans accepted by such family members shall be considered to be accepted by the~~

~~judicial appointee.~~

~~Judicial appointees are often invited by lawyers or other persons to attend social, educational, or recreational functions. In most cases, such invitations would fall within the realm of ordinary social hospitality and may be accepted by the judicial appointee. If there is more than a token fee for admission to the function, however, unless the fee is waived by the organization, the judicial appointee should pay the fee and not permit a lawyer or other person to pay it on the judicial appointee's behalf.~~

~~G.~~ E. **FIDUCIARY ACTIVITIES.**

While a **judicial appointee** is not absolutely disqualified from holding a **fiduciary** position, a **judicial appointee** should shall not accept or continue to hold such position if ~~the holding of it~~ doing so would interfere or seem to interfere with the proper performance of official duties, or if the business interests of those represented require investments in enterprises that are apt to come before the **judicial appointee** officially or tend to be involved in questions to be determined by the **judicial appointee**.

~~H. ARBITRATION~~ F. SERVICE AS ARBITRATOR OR MEDIATOR.

A full-time **judicial appointee** ~~should~~ shall not act as an arbitrator or mediator or otherwise perform official functions in

a private capacity unless expressly authorized by law.

COMMENT

This Canon 4F does not preclude a **judicial appointee** from participating in settlement conferences or applying methods of alternative dispute resolution that are included in the **judicial appointee's** official duties. If by reason of disclosure made during or as a result of a settlement conference or ~~an~~ other alternative dispute resolution proceeding, the **judicial appointee's impartiality** might reasonably be questioned, the **judicial appointee** should not ~~further~~ participate in the matter further. See Canon ~~3E~~ 3D (1).

~~F.~~ G. PRACTICE OF LAW.

(1) Except as ~~provided in subsection (2)~~ allowed by Canon 4G, a **judicial appointee** should shall not practice law.

Notwithstanding this prohibition, a **judicial appointee** may act *pro se* in a matter involving the **judicial appointee** or the **judicial appointee's** interest and, if without compensation, may give legal advice to and draft or review documents for a **member of the judicial appointee's family**.

(2) To the extent not expressly prohibited by law or the appointing authority and subject to other applicable provisions of this Code, a part-time **judicial appointee** may practice law. ~~to the extent permitted by the appointing authority, but the.~~

(3) A **judicial appointee** shall ~~not~~ avoid conduct whereby the **judicial appointee** ~~use~~ uses or ~~appear~~ seems to use the appointee's position to further ~~that~~ success in the practice of law.

(4) A **judicial appointee** shall not appear as an individual in a matter involving the **judicial appointee** or the **judicial appointee's** interest in the appointing court.

~~(3) (5) Prior to assuming official duties, a full-time **judicial appointee** should enter into an agreement for payments relating to the **judicial appointee's** former law practice and should submit the agreement to the Judicial Ethics Committee so that the Committee may review it as to the reasonableness of the time provided for payments to be made under the agreement. A payment period limited to a maximum of five years or less is presumptively reasonable. A longer payment period is permitted only with the Committee's prior approval as to its reasonableness. An agreement entered into under this provision may not be amended without the prior approval of the Judicial Ethics Committee.~~

COMMENT

Canon 4G (1) limits the practice of law in a representative capacity but not in a *pro se* capacity. A **judicial appointee** may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a **judicial appointee** must not abuse the prestige of the position for any reason, including advancement of an interest of the **judicial appointee** or the **judicial appointee's** family. See Canons 2B and 4C (1).

This Code allows a **judicial appointee** to give legal advice to, and draft legal documents for, a **member of the judicial appointee's family**. However, except for a part-time **judicial appointee** allowed to practice law, a **judicial appointee** must not receive any compensation from, or act as an advocate or negotiator for, a **member of the judicial appointee's family** in a legal matter. A part-time **judicial appointee** must not act

contrary to a prohibition of the appointing authority.

H. COMPENSATION AND REIMBURSEMENT.

Unless otherwise prohibited by law, a **judicial appointee** may receive compensation and reimbursement of expenses for extra-official activities permitted by this Code if:

(1) the source of compensation or reimbursement does not give the appearance of impropriety;

(2) the compensation does not exceed a reasonable amount and does not exceed the amount a person who is not a **judicial appointee** ordinarily would receive for the same activity; and

(3) the expense reimbursement is limited to the actual cost of food, lodging, and travel reasonably incurred by a **judicial appointee** and, if appropriate to the occasion, by the **judicial appointee's** spouse or guest.

COMMENT

Acceptance of an "**honorarium**," as defined in Code, State Government Article, §15-102 (r), is governed by Code, State Government Article, §15-505. See Judicial Ethics Opinion No. 128 (issued February 2, 2000).

A **judicial appointee** must disclose financial matters such as debts or income, investments, or other assets, only to the extent required by Canon 4H, by Canon 3D or E, or by law. See Code, State Government Article, §15-610.

CANON 5

*Political Activity*

A. POLITICAL CONDUCT OF A **JUDICIAL APPOINTEE** WHO IS NOT A CANDIDATE.

(1) A **judicial appointee** who is not a candidate for election to judicial office ~~should~~ shall not engage in any partisan political activity ~~and should~~.

(2) (A) Except as otherwise provided in Canon 5A (2), a **judicial appointee** shall resign the appointed position when ~~becoming the **judicial appointee** becomes~~ a candidate for a non-judicial office, ~~except that a~~.

(B) A **judicial appointee** may continue to hold the ~~appointment~~ appointed position while a candidate for election to, or ~~serving as a~~ delegate in, a State Maryland constitutional convention.

B. POLITICAL CONDUCT OF A **JUDICIAL APPOINTEE** WHO IS A CANDIDATE.

(1) A **judicial appointee** who is a candidate for election to a judicial office may engage in partisan political activity allowed by law with respect to such candidacy, except that the **judicial appointee**:

(a) shall maintain the dignity appropriate to the appointed position and act in a manner consistent with the

impartiality, independence, and integrity of the judicial system;

~~(1) (b) should shall~~ not act as a leader or hold ~~any~~  
an office in a **political organization**;

~~(2) (c) should shall~~ not make a ~~speeches~~ speech for a  
candidate or political organization or candidate or publicly  
endorse a candidate for non-judicial office;

COMMENT

A **judicial appointee** does not publicly endorse a candidate for public office by having the judicial appointee's name on the same ticket.

~~(3) should maintain the dignity appropriate to the~~  
~~appointed position;~~

~~(5) (d) should not make pledges or promises of conduct~~  
~~in office other than the faithful and impartial performance of~~  
~~the duties of the office, announce the **judicial appointee's** views~~  
~~on disputed legal or political issues with respect to a case,~~  
~~controversy, or issue that is likely to come before the court,~~  
~~shall not make a commitment, pledge, or promise that is~~  
~~inconsistent with the **impartial** performance of the adjudicative~~  
~~duties of the office; or~~

COMMENT

Canon 5B (1)(d) does not prohibit a candidate from making a  
pledge or promise respecting improvements in court administration  
or the faithful and **impartial** performance of the duties of the  
office.

(e) shall not knowingly misrepresent the judicial

~~appointee's his or her identity, or qualifications, the identity or qualifications of an opponent, or any other fact; and~~

~~(4) (f) should shall~~ not allow any other person to do for the **judicial appointee** what the **judicial appointee** is prohibited from doing.

(2) A candidate for a judicial office may respond to a personal attack or an attack on the candidate's record as long as the response does not violate Canon 5B (1).

#### C. STATUS OF A **JUDICIAL APPOINTEE** AS A CANDIDATE.

A "Candidate" applies to a **judicial appointee** ~~who is seeking election to be elected to a judicial office is a "candidate" for that office when~~ from the date on which the **judicial appointee** files a certificate of candidacy in accordance with the State Maryland election laws, but no earlier than two years prior to the general election for ~~that the~~ office, ~~or when a newly appointed judge to that court becomes a "candidate" in the same general election, whichever first occurs.~~

#### D. DISCIPLINE.

A **judicial appointee** who is an unsuccessful candidate for judicial office and who is a lawyer is subject to attorney discipline for campaign conduct. A successful candidate is subject to judicial discipline for campaign conduct.

Cross reference: See Rules 16-701 through 16-781 concerning attorney discipline and Rules 16-802 through 16-810 concerning

judicial discipline.

**CANON 6**

*Compliance*

Violation of any of the ~~canons of this Code of Conduct for~~  
~~Judicial Appointees~~ Canons by a **judicial appointee** is grounds for  
disciplinary action, including removal by the appointing  
authority.

Source: This Rule is derived in part from former Rule 1232  
(renumbered Rule 16-814 by Rules Order dated January 18, 1996,  
effective July 1, 1996) and is in part new.